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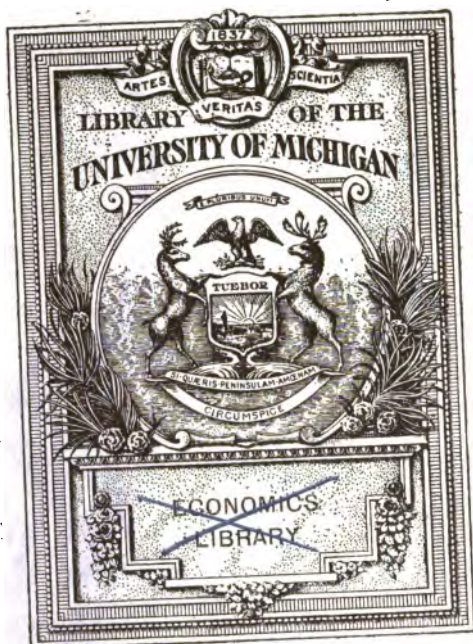
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*With the Compliments of
Charles William Mosely
and
Frederick Strong Mosely
brothers of
Edward Augustus Mosely*

*Newburyport
Mass.*

**THE LIFE WORK
OF EDWARD A. MOSELEY**



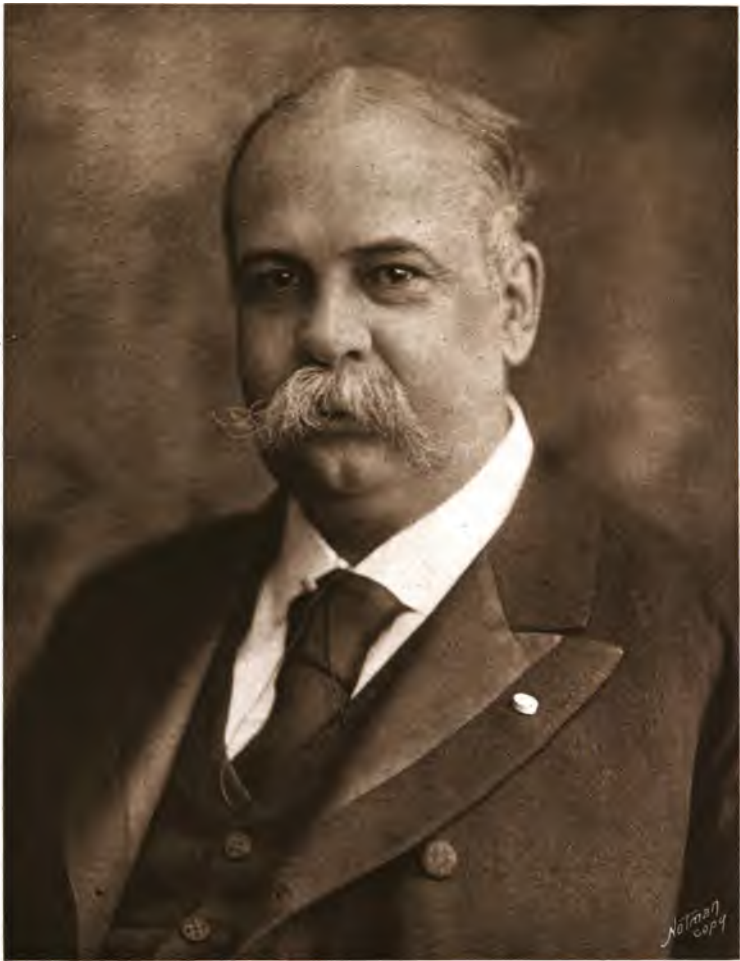
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THE LIFE WORK OF
EDWARD A. MOSELEY
IN THE SERVICE OF HUMANITY

BY
JAMES MORGAN



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1913

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FOREWORD

WHEN a man dies, his worth must be estimated not by what he received but by what he gave, not by what he achieved for himself but by what he achieved for others—for us. If he drew out of life more than he put in, his name must pass into insolvency only to be discharged into a kindly oblivion. If, on the other hand, his services exceed his honors and rewards, the world is his debtor. Edward A. Moseley, Secretary of the Interstate Commerce Commission from its organization in 1887 until his death in 1911, held only a modest office, but in the final accounting he is disclosed a creditor of humanity.

At the request of his brothers and as my offering to the memory of a friend, I have prepared this record of his life. Admittedly it is out of proportion to his fame, but so was the work he did for a quarter of a century as champion of laws which have greatly promoted safety, justice, and peace on the railroads of the United States. The story needs to be told all the more because the general public knows so little of the labors of this government official who quietly turned what might have been a routine task into a noble service on behalf of his fellow men.

Pioneer in an important field of meliorative legislation, his work and his papers specially deserve the attention of those who are interested in the development of the federal power as a regulative agency, and the narrative and documents of his long and successful endeavor before Congress

and in the courts are significant materials for an opening chapter in the history of the supervision by the nation of interstate affairs.

He anticipated what is to-day a national movement for the conservation of natural resources, which fittingly began, under his leadership, with the conservation of human beings. He saw the safeguards of life on the rail grow year by year until Congress required every freight car in the country to be made over. He saw the employer's liability for deaths and injuries among railroad employees established by law and decision. He saw the hours of service on the trains limited by act of Congress, and saw peace between employees and employers fortified by effective provisions for mediation and arbitration.

If every British ship bears on her hull "Plimsoll's Mark" in token of Samuel Plimsoll's act of Parliament against overloading, equally the air brake, the automatic coupler, and each device prescribed by Congress for the security of trainmen on the hundreds of thousands of freight cars in the United States are the "Moseley Mark," and a testimony to Edward A. Moseley's unselfish and unwearied labors in behalf of the far more numerous crews on the rail who face perils as great as those of the sea.

Boston.

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EDWARD A. MOSELEY

CHAPTER I

A PUBLIC-SPIRITED RACE

EDWARD A. MOSELEY was fortunate in the accidents of his birth, fortunate in the commonwealth, the town, and the family in which he was born.

He was reared in a home marked by comfort and refinement. His native town of Newburyport, although linked with the world by commerce and dignified by a fine civic pride, was almost rural in its quietness and in its neighborly spirit. From his native state of Massachusetts, he received the heritage of her high ideals of public service, and in his boyhood he saw her the moral leader of the nation in its great crisis.

While he was a most democratic man, he always took an honest satisfaction in the traditions of his old New England family, which he diligently searched out in its many branches. His has been a stanch and public-spirited race characteristic of Massachusetts, where family pride attaches not so much to old fortunes won in trade and to large estates as to the record of services and honors in the forum, the field, or the pulpit. His interest in his genealogy was centered upon those forbears who had served the colony, the commonwealth, and the country, and he

liked to trace his descent from good men who had taken their part, in all the various movements which in peace and war make up the history of New England.

No less than twenty-two of his ancestors are recorded among the pioneers of the Old Bay Colony, who settled on the shore of the New World between 1630 and 1750, including Thaddeus Clark, John Brown, Richard Strong, William Thomas, Thomas Chapman, and John Maudesley or Moseley, who came from near Hull in England in the beginning of the Puritan immigration and settled at Dorchester, now a district of Boston, before 1640.

Samuel, the great-grandson of John Moseley, graduated from Harvard in 1729, was chaplain to Governor Belcher and for fifty-seven years pastor of a church in Windham, Connecticut — “an eminent Christian and distinguished divine, a tender companion, an affectionate parent,” his epitaph tells us. His son, Ebenezer, graduating from Yale College in 1763, followed in his father’s footsteps and, entering the ministry, went as a missionary to the Indians of the Six Nations, among whom he gained great influence. Patriotism, however, transformed the clergyman into a soldier when the Revolution came. Raising a company, he entered the army under General Israel Putnam and was a captain at the battle of Bunker Hill. He was afterward commissioned as a colonel, and was often elected to the Connecticut Legislature. Among other ancestors of Edward A. Moseley in the Revolution were Colonel Gilmore, Colonel Jonathan Buck, and Captain Ebenezer Buck.

The clerical soldier, Colonel Ebenezer Moseley, married

a sister of Governor and Senator Caleb Strong of Massachusetts, and their son, Ebenezer, established the family in Newburyport. The latter was a graduate of Yale, a public official and successful lawyer, in whose office Caleb Cushing, afterwards a distinguished attorney-general of the United States, read law. A portrait of Colonel Moseley holds an honored place among the portraits of distinguished leaders of the Essex bar in the Court House at Salem. His position in the community is well shown by the fact that he was chosen to welcome Lafayette to Newburyport when the illustrious Frenchman was making his farewell tour of America in 1824.

Ebenezer Moseley's son, Edward Strong Moseley, who was born in Newburyport in 1813 and died there in 1900, was among the last surviving types of New England merchants in the golden age of New England commerce, when adventure and romance mingled with trade. He was a member of the Yale Class of 1833, and began his long and prosperous business life in the counting room of Benjamin A. Gould, a noted East India merchant of Boston. As supercargo, he made two voyages to India and one to China in his early days and crossed the equator sixteen times. He became one of the largest shipowners of Newburyport and had an interest in scores of vessels. While yet a young man, it was said of him that he was "the richest man in town, . . . but he never had any pride of purse or possession and disliked exceedingly any ostentation or display of mere money."

As the trade between New England and the East declined, Mr. Moseley took part in establishing manufac-

tures, but in the last fifty years of his life he was engaged in banking. He was president of the Mechanics' National Bank for forty years and, until his death, and for nearly as long a time, president of the Institution for Savings in Newburyport, a man "whose word was law," and having "the manner of long command . . . yet few men have lived with a more open hand than his when his heart or his sense of justice was touched . . . his charities, although unheralded, were large . . . a man of scholarship, with refined and eclectic tastes in literature, a constant student and fastidious reader, collecting rare books and manuscripts, himself a writer of faultless English and well-rounded periods."

Edward Strong Moseley's life was filled with service, but aside from membership of the school committee and on the Board of Trustees of the Public Library, he never accepted public office. Himself a liberal giver to the library, he largely influenced its generous endowment. As president of the Merrimac Humane Society and president of the Society for the Prevention of Cruelty to Animals, his benevolent spirit found active expression. His father had been one of the founders of the Humane Society, and his own son, Edward, was in turn a member of it.

He married, in 1839, Charlotte Augusta, daughter of Rev. George T. Chapman, D.D., an Episcopal clergyman, born in Devonshire, England, a woman whose "life was like one long prayer." Of that happy union which lasted fifty-four years and until Mrs. Moseley's death in 1893, the surviving children are Charles William and Frederick

Strong Moseley, both prominent and fortunate in the financial life of Boston; Mary Alice Abbot of Westford, Massachusetts, and Charlotte Augusta Nason, who lives in the old home on High Street, Newburyport. The eldest of this interesting family was Edward Augustus Moseley, born March 23, 1846.

CHAPTER. II

SAILING BEFORE THE MAST

NEWBURYPORT was and is a rare good town to be born in. It is more than a geographical term, more than a mere political subdivision. It inspires veneration and affection among its sons and daughters, and to Edward A. Moseley it ever remained the dearest spot of earth.

Although an incorporated city, with busy mills, an old-time serenity clings to it. The traditions of other days linger about its stately old homes and quaint old churches, as well as about the neglected wharves and the fishermen's cottages down by the shore. It is a place with a character and charm of its own, proud of its past and content with its present lot. John Quincy Adams lamented that he had found better society in Newburyport when he was a law student, than he could find in Washington when he was President.

The poet's proposition that the child is father of the man was verified in Mr. Moseley's life. He was a youth with standards of his own and not at all conventional. He went to several private schools, after which he attended the West End Male Grammar School and the Brown High School, but he did not stay to graduate from the latter. He cared little for books, but a great deal for life.

A healthy young animal, he had his full share of the

element of mischief, which moved him, however, to no worse tricks than filling the schoolhouse furnace with asafetida, and thus causing school to be dismissed. The same welcome result was ingeniously accomplished by him another time when he stuffed the thermometer with ice. When the principal came and read the temperature, he shivered and said, "Why, boys, you can't study in this cold room; off you go!"

With it all, the boy was kind, and his wiser teachers found his weak spot and ruled him through his affections. The slightest kindness would overcome him. One day, after perpetrating some offense, he opened his desk and saw there a volume of Moore's poems, "From his affectionate teacher, O. B. M." That was enough to conquer him, and thenceforth nothing could tempt him to break a rule.

Mathematics was his favorite study, and yet he seemed not to be studious of books even in that branch. He worked out problems easily, but almost by his own methods.

His brother, Frederick S., recalls him as "not a remarkable scholar, but much more interested in outdoor life. He was an athlete and a good deal of a boxer. Although it may not be worth mentioning, I think he enjoyed a good, clean fight more than anything else, and it is my impression he generally came out ahead, though far from being a bully."

"I remember him," his brother, Charles W., writes, "as a very active, wide-awake boy; very much interested in his friends and devoted to them, and very much in-

terested in nature and everything of the outside world about him.

"He always had some hobby and was, at different times, interested in his garden, in making and collecting minerals and other natural objects, and also later in all kinds of sports. At one time he was very much interested in hens, later in the male of the species, which he used in cock fights, also in colts and horses and in timing their speed.

"He was always warm-hearted and prodigal with his money and good will. He never seemed to know what the word fear meant, and in tussles with the boys he was always our champion.

"The qualities that in after life led him to take the part of the ill-used employees of railroads caused him as a boy to take the part of the weaker fellows, and many a stiff fight did he make in protecting them from the overgrown bullies.

"In Newburyport there were what amongst the boys were called the 'upperlongers' and the 'downerlongers'; and I well recall a memorable fight, which he waged on our frog pond in the winter season at the time of skating, with a big, bluff, strong champion of the 'downerlongers.' This champion was a bigger boy than my brother, and the battle was almost an uneven one for that reason. But Edward came off with all honors, as it was deemed a drawn battle, and he never knew when he was licked.

"Although most intelligent, my brother when a boy never cared much about books or was much of a general student; but, where he was interested, in natural history and other matters, he was a good reader.



MR. MOSELEY IN BOYHOOD



"The spirit of adventure was always strong in him and although my father would have been glad to send him to college, he early caught the fever to go to sea. It was no use combating it, for go he must. So he was provided with a good outfit and shipped as a boy before the mast aboard the ship *Coringa*, which belonged to Mr. Nathaniel Goddard, a warm friend of my father."

In Edward's boyhood, Newburyport, like many other New England ports, was turning from the sea and its declining trade to the land and its new commerce by rail. The chief figures of the town were the retired captains and the East India merchants, who had transformed themselves into prosaic manufacturers and bankers. The leaders in the community had served their earliest apprenticeship on ship deck and in far-away ports, the traveling scholarship of that period, while the rank and file of the inhabitants generally had been to sea. They were all, indeed, men of the world.

Edward was only sixteen when he felt he had enough of schools and books. He thought it was time for him to see the world and claim his traveling scholarship. He was strong in body, with a spirit restless for adventure. But ships sailed no more out of the mouth of the Merrimac to the ends of the earth. Another call than that of the sea sounded in the boy's ears. The drums were beating to arms in the Civil War, and Edward wanted to be a soldier. His father, however, preferred his own school, and insisted that if his son would leave home, he should go to sea. Thus Edward became a sailor.

With a tarpaulin on his head, hard as wood and var-

nished until it glistened, a pea-jacket, trousers flaring from the knees down, with a blue woolen shirt and a flowing black tie, he shipped before the mast in the ship *Coringa* from Boston, laden with lumber for the south coast of Africa and destined finally to Calcutta. His father said that if a boy was to become a good sailor he should not climb through the cabin window but through the hawsehole; and Edward shipped with the crew, at nine dollars a month.

The New Englanders having forsaken the sea, he was one of the last of the sons of shipowners to sail before the mast. All but one of his sixteen comrades were men of foreign birth and foreign speech. They were a more than ordinarily rough lot, because in those days the war was attracting the best of their craft. When the sailor boy first greeted his companions of the forecabin, most of them were still land sick from their cruising in the crooked streets of the North End of Boston. Several had to be hoisted aboard like live stock, and Edward's opening lesson in his new school was a demonstration of the sobering effects of the belaying pin, vigorously applied by the captain and mate.

It was in truth a sudden and rude transition for a boy accustomed to a cultivated home and the watchful care of gentle parents. As he saw the water widening its space between him and the wharf, he leaned over the rail in an agony of homesickness, and wept into Boston harbor.

The *Coringa* was an old-fashioned East Indiaman that took all hands to shorten sail. A voyage on her entailed hardships unknown in this day. There was then little

law or sentiment for the protection of sailors. The safeguarding of their interests was in its infancy. Punishments were severe to the degree of cruelty, and there were few or no restraints on the brutal passions of an officer.

Hygienic provisions were unknown or ignored, and the living accommodations wretched. There was yet no canned food, and the sailor could tell what his bill of fare would be months in advance. Edward's menu consisted of salt pork and beef the color of mahogany, and sea biscuits that had to be broken with mallets. He slept in the forecabin and shared in every way the common lot.

Sometimes he had to fight to hold his own in that rough company. Though of tender years and gentle breeding, he was strong as a moose, registering one hundred and seventy-five pounds on the scales. When one of the sailors drew a knife on him, the boy struck it from his hand and pounded the bully to the floor. The mate, coming upon them, whipped the aggressor for his murderous conduct.

It was a long and hard voyage, but Edward felt well rewarded by the strange sights that fascinated him while ashore in India. He contracted Asiatic dysentery in Calcutta, however, and had a most miserable homeward voyage. The captain, foolishly jealous of the shipowner's son and fearing he might be put over him, added to his tortures by nagging him fiendishly. He used to come to his cabin with the air of wishing to hasten his death, and cheerfully report that the sharks were following the ship and waiting for his body to be thrown over to them.

The poor forlorn boy was desperately ill and felt that

the one thing which could keep him alive was to concentrate his mind on the thought that he must see his mother again. The Bible she had given him was his only diversion, and, to his lasting profit, he read it constantly. For five months he was out of sight of land, and when at last the *Coringa* entered home waters, he had to be carried ashore, half wasted away with the fever. From one hundred and seventy-five pounds he had fallen away to ninety. Only careful nursing slowly restored him to his normal health and strength.

He lived to pay back the cruelly foolish captain of the *Coringa*, but not in the captain's own hard coin. In after years, when the shipmaster was in great sorrow and needed the pardon and favor of his sailor, he received both for the asking.

Edward was gone a year on the trying voyage, and learned lessons that guided him throughout his life. He had run the gantlet of the mobs, as Emerson expressed it, and, removed from the social environment in which he was reared, he had gained in the rough-and-tumble school of the forecastle and the docks, self-denial, self-reliance and that vigorous independence which ever afterward stamped his character. He had met his fellow-men from many countries on a common level, regardless of race and education, and while living their life with them he made the discovery, as he always said, that the qualities of manhood are not confined to any race or class or station.

He came out of that forecastle a thoroughgoing democrat, as free from the spirit of caste as any man who ever breathed. Democracy was more than an intel-



MR. MOSELEY'S BOYHOOD HOME, NEWBURYPORT, MASSACHUSETTS

lectual conviction with him. It was an emotion, an instinct, and he never looked down or up to any man. With years and experience, he grew increasingly careless and innocent of the lines that unhappily divide men, although he appreciated and attracted the society of cultivated and intellectual individuals, and the friendships of his life defied social classification.

CHAPTER III

VENTURES AND ADVENTURES

SOME time after his return from the East Indies, but before he was well established on his land legs, Edward agreed to sail for the northwest coast of America and to Alaska on a voyage that would take him away from home five years. He was overruled by his parents, however, and he repressed his longing for the sea. His ambition was diverted to a business life and, entering the office of the Bartlett Mills in Newburyport, he stayed there long enough to gain some knowledge of the manufacture of cotton goods.

Every salt breeze that blew in upon him, however, and the water, stretching away from every cross street, distracted and tempted him. He dallied with his favorite element by making a small venture in the business of mackerel fishing, taking an interest in some vessels engaged in that fishery. When he left the mills, he gravitated toward the East India trade and was for a while in the office of Rufus Wills and Son of Boston. After a voyage to the West Indies, he made a connection with the noted East India house of N. and B. Goddard, where he continued for several years, in the course of which he acquired some property in ships.

The counting house, however, never claimed from him a whole-hearted loyalty, and as soon as he was twenty-

one he made a little voyage into politics. His city, the state, and the country were Republican. Perhaps his innate interest in the under dog was his chief reason for going over to the Democrats.

He delighted in defying social prejudices and making friends with the non-elect, such as he came upon in the pursuit of his sporting interest in boxing, in horses, dogs, and cocks. His personal popularity, therefore, more than offset the unpopularity of his party, and he was elected to the common council when he was hardly more than of age. He served two terms in that body, after which he was for two successive terms an alderman. Although the youngest member of the city council, he led the movement for funding the heavy city debt and felt flattered to be called "the father of the sinking fund." For fourteen years he served as one of its trustees.

When he sought promotion to a seat in the Legislature of Massachusetts, however, political lines were drawn more sharply against his party in that wider field, and he was defeated, although complimented with the largest vote ever cast for a Democratic candidate in his district and lacking only ten votes of an election. As the Democratic candidate for commissioner of insolvency, he met again the fate to which Massachusetts Democrats were inured in that period.

Political ambition was not his only distraction from business in those days of his young manhood. He was in love, and with all the ardor of first love. His choice had fallen on one whom he had known from boyhood, and probably it would not have been easy for him to say

when she ceased to be his playmate and bloomed into a sweetheart. Sailor-like, he had her name tattooed on his arm. Her house was to him like another home, and after his schoolday battles he used to go to her mother to have his face washed and his clothes sewed up before venturing to present himself at his own home.

He wished to marry at twenty, but the enterprise did not commend itself to his father's trained judgment as a financier. He was told that he should not marry until he had \$10,000, and, like the great historian of Rome, "he sighed as a lover but obeyed as a son." When he was only twenty-three, however, he was enabled by some successful ventures to meet his father's standard of prudence and realize the dearest hope of his heart. Kate Montague, daughter of Joseph Newmarch and Sarah Bridges Prescott, became his wife on April 13, 1869, bringing to him a girlhood love that never grew old, a rare devotion, and the sound counsels of a good woman's wisdom. From her he always had encouragement in his best endeavor, and her self-forgetfulness was a large factor in his success.

Mrs. Moseley is a lineal descendant of Colonel William Pepperell and of Judge Joseph Newmarch, and four of her mother's ancestors came over in the first voyage of the *Mayflower*. Three children were born to this marriage, of whom only one, Katherine Prescott Moseley, survives.

The glory of the East India trade having faded, and office duties never having interested him, Mr. Moseley went into the southern pine lumber business in 1872,

when he was twenty-six years old. With Mr. William D. Wheelwright, he formed the firm of Moseley and Wheelwright in Boston and took upon himself the more congenial task of looking after the outside activities of the concern. The new firm quickly built up a large and constantly increasing business, in furtherance of which Mr. Moseley traveled in the Gulf states, Central and South America, the West Indies and Europe. His firm always had under charter a fleet of vessels, which loaded at southern ports in the United States under his direction. While his principal headquarters were at Pascagoula, Mississippi, he came to know the entire yellow pine region and all its mill men.

One of Moseley and Wheelwright's notable contracts was to furnish flooring and planking for the Centennial Exposition at Philadelphia in 1876. Another interesting contract they undertook was to build a palace for the president of the republic of Hayti. Mr. Moseley went to Port au Prince to superintend the construction. There he won his way into the confidence of the dusky potentates and was in full enjoyment of his experience in the inner councils of the government, when a revolution broke out. The high official with whom he had the closest relations having been shot, he deemed it prudent to flee the island and abandon the contract for the palace.

On one of his West Indian journeys he was stricken with yellow fever at St. Thomas, but something more perilous still befell him on a visit to Cuba in the midst of the Ten Years' War, the unsuccessful revolution that preceded the more recent and successful revolt against

Spanish rule. He landed at Santiago from Jamaica early in 1874, shortly after the fifty-one men of the filibustering vessel *Virginus* had been stood in a row there by the Spaniards and shot down as pirates. He arrived to find the Spanish military burning with hatred of Americans as sympathizers with the Cuban rebels.

His destination was Havana, where he had some important business to do for his firm, but he was warned on all sides against making the journey. An American newspaper correspondent had recently undertaken it and mysteriously disappeared. The American consul earnestly advised him, and the consul's good wife, with tears in her eyes, begged him not to go. He was told that he might be murdered on the ship and his body thrown overboard. Nevertheless, he went, not necessarily from a foolhardy love of danger, but in the easy confidence characteristic of the man, that he could take care of himself in any situation.

Carrying a revolver and a gimlet dagger, he boarded the coasting vessel *Gloria*, filled with Spanish officers and soldiers. He was the only civilian in the company, but he reached Manzanillo without having had the least trouble with his fellow-voyagers. While the *Gloria* lay at the Manzanillo wharf, he went ashore to attend to some business which took him to the home of the American consular agent. There he was led into a dark room, and the consular agent, who was a German resident in Cuba, made a long appeal to his love of liberty as an American.

The patriots of Manzanillo wished to make a certain

important communication to a secret friend of the revolution in Havana. The agent begged Mr. Moseley to deliver the message as a service to the cause of liberty, and he consented to do it. As the agent dictated it, he wrote the message on the last leaf of a small account book and then pasted the leaf to the cover.

After his dinner of tainted salt cod, cooked in rancid oil, and spoiled jerked beef from Buenos Ayres, another patriot suddenly and silently made his appearance before the new-found friend of Cuba libre. This man held out two letters, but Mr. Moseley was wary of him and paid no attention to his approaches, whereupon the agent said, "They are all right; take them." They were to be delivered to the same man in Havana, and, although Mr. Moseley felt he was getting deeper and deeper into the plot, his spirit of adventure was aroused and he accepted this added service. Returning to the *Gloria*, he cut a neat slit in one of his bags and hid the two letters between the lining and the leather.

After another untroubled voyage, surrounded by Spanish uniforms, he went ashore again at Cienfuegos, where he met some ship captains he knew, and he was known in those days to most of the men who sailed in West Indian waters. While he was speaking with the captains, two officers came to him and through an interpreter told him that, although they were wearing the uniform of Spain, they were revolutionists at heart. Would Señor have the kindness to inform them how to get into communication with the nearest insurgent army?

"Don't betray us," the spokesman added, in a pleading tone, "or we will be shot."

"I am a merchant," Mr. Moseley cautiously answered, "and know nothing about this revolution. I have no information to give and no advice, except to say that if I were a Spaniard, I would remain one."

"Those two beggars followed me to my ship," he said, in recalling the experience, "and they with others examined my baggage and searched my person, stripping me to the skin. They found nothing, not even my heart, for that was in my throat. I saw that I had brought myself under official suspicion, and I knew that if any treasonable correspondence was found on me, I would probably be shot down like a dog."

At Surgidero, where he left the boat to take the train for Havana, he was searched again, and for a week after his arrival at the latter city he thought it best not to deliver the dispatches of the revolutionists. When at last he presented himself to the revolutionary agent, he moistened the leaf of his little account book, tore it out, and gave it to him with the two letters, and thus fulfilled the delicate duty thrust upon him in the name of liberty.

From southern seas to northern wilds, the scene suddenly shifted in his life. Owing to some unfortunate loans, his firm was obliged to protect itself by taking over the township of Jerusalem in Maine, and there in the wilderness he passed much of his time through three years. He went into the woods in the fall with his teams and his big crew of men, and in the spring the logs they had cut were driven out and down the Kennebec. He

shared the lot of his loggers and drivers, and there never was a mark of dress or manner to distinguish him from his men. His firm had leased a mill on the dam at Augusta, and one night when a heavy freshet came, he could see in the lightning flashes almost the entire cut of several million feet of logs going over the dam. There were no booms out, and the logs were scattered and borne to sea.

This, with other misfortunes befalling the firm at the time, forced the failure of Moseley and Wheelwright. Among the liabilities were some debts which the partners regarded as debts of honor, representing money lent them personally. They agreed together that these must be paid in full, and they entirely wiped out that class of indebtedness within three years.

They had made themselves the leaders in the southern timber trade, and in order to carry on operations the firm was reorganized as Moseley, Wheelwright and Company, Mr. A. M. Stetson having joined them. Shortly afterward, Mr. Wheelwright took into his own hands the New York interests of the partnership and surrendered certain of his Boston interests to the new firm of Stetson, Moseley and Company.

The truth is that while Mr. Moseley, by his energy, industry, intelligence and enterprise had shown himself capable of building up a large if not profitable business, he had yet to find, when he was forty, his real business, the business for which his life thus far had been only a preparation.

CHAPTER IV

IN THE LEGISLATURE

STETSON, MOSELEY and COMPANY had a lumber yard and sawmill in South Boston, and Mr. Moseley lived in that district, in Thomas Park on the slope of Dorchester Heights, where Washington mounted the cannon that drove the British out of Boston.

A workman in his lumber yard, a man from Maine, told Mr. Moseley one morning that he had to support eight children on \$1.25 a day, and that he had not been inside a theater since his marriage. "I had one child," Mr. Moseley explained when telling of that interview with his workman, "and spent more than \$1.25 a day foolishly." He went to the man the next morning, told him to get the men in the yard together and ask for \$1.75. "My partner will consult me," he said, "and I will advise him to give you the increase."

The unique strike, thus worked up by the employer against himself, was a complete success for both sides. It brought the men an increased wage and brought Mr. Moseley a long step nearer his life work. The Knights of Labor were now in full swing and soon to be nearly two million strong under the leadership of T. V. Powderly. The problem of labor was looming large. Association with his brother-in-law, Mr. Richard S. Spofford of Newburyport, a distinguished lawyer, who was a states' rights

Democrat and who had presided over a Labor Convention, was not without influence upon Mr. Moseley in this matter.

Although born to wealth, Mr. Moseley had lived the life of the man who works with his hands, in the fore-castle and in the logging camp. As an employer of large numbers of workers, there never was a line between him and his employees. His own experience had impressed him with the belief that the labor problem could be solved only by the introduction of a freer democracy in the industries of the country, by employers mingling with their men, studying their wants, and finally making them allies instead of foes.

To the dismay of some and the disgust of others in the employing element, he joined the Knights of Labor. He was soon chosen master workman of a big South Boston assembly, of which nearly all his employees were members. The meetings became the forum for the discussion of all sorts of economic questions by the workmen in most of the trades and factories of the district, where Mr. Moseley was largely instrumental in increasing the membership of the Knights of Labor to several thousand. Strange as it seemed to have an employer among them, Mr. Powderly and other leaders could not doubt his earnestness. He won their confidence and became an officer in the district assembly.

It was in the same period that Mr. Moseley was drawn into politics again. His brother-in-law, Mr. Spofford, was the Democratic candidate for Congress on the ticket with Grover Cleveland in 1884, and Mr. Moseley managed

the campaign. He was also chosen a member of the executive committee of the Democratic state committee. Mr. Spofford's spirited fight was unavailing in a strongly Republican district. He did not go to Congress, but his brother-in-law and manager went to the Legislature, being elected in 1885. Still claiming a legal residence in Newburyport, Mr. Moseley was chosen from that city.

Having had a large experience in shipping by rail, he was appointed a member of the railroad committee. Although he did not often address the House, his intelligence and energy made him at once an influential and useful member. He soon found the hidden wires that moved men, and developed a genius for pulling them.

Regulative legislation concerning the conditions of labor, then still in its infancy, appealed to him strongly, and he voted for woman suffrage. Being on the railroad committee, his attention naturally was directed toward proposals for safer car couplers, brakes, and frogs. He introduced and gave a good deal of time to promoting the passage of an industrial arbitration bill. When he actively supported an employers' liability bill, introduced by a friend and fellow-member, Mr. Philip J. Doherty of Boston, great pressure was brought to bear for the purpose of compelling him to change his position. While the British Parliament, under the leadership of Gladstone, had enacted a modern statute on this subject to meet modern conditions, the law in republican America had not advanced a step since the dawn of the new era of industrialism.

That Mr. Moseley, himself an employer of labor and

president of the Mechanics' Exchange of Boston, should advocate a more liberal law, excited violent indignation in certain quarters. A delegation from the Master Builders' Exchange, where all the builders of Boston met, went to him and told him that his support of labor measures, particularly the employers' liability bill, had disappointed and displeased his associates in the business world. As an employer, he knew what the latter bill, at least, meant to the pockets of employers. The delegation demanded that he not only vote against the bill, but rise in the House and oppose it.

It is hardly necessary to say that such an appeal to such a man only served to make him stand firmer. He was no longer content merely to vote for the bill and to defend it in the lobby, but he determined to advocate it on the floor, and when he spoke he announced that he spoke as an employer. For this insurgency he was told that he should never again be permitted to enter the Master Builders' Exchange, a privilege indispensable to the successful conduct of a lumber business at that time. He accepted the consequences to himself without complaining, but he did not feel that his firm should be made to suffer on his account, and he took steps to withdraw from the partnership with Mr. Stetson.

If he had failed to serve his private interest in the Legislature, he had served the public interest to the satisfaction of his constituents, who again elected him to the House in 1886. It was in the midst of his second session that the opportunity for a wider service came to him, the service to which he gave his life.

CHAPTER V

FINDING HIS PLACE

THE Interstate Commerce Law was enacted on February 4, 1887, a full hundred years after the framing of the Federal constitution, which gave the Congress the power "to regulate commerce with foreign nations, and among the several states." Congress had from the outset exercised its power to regulate commerce with foreign nations, but it did not approach its duty toward "commerce among the several states" until after a century of inaction. Meanwhile the states themselves were forbidden to interfere with that commerce.

When New York granted Robert Fulton and his associates the exclusive right to navigate the waters of that state with steamboats, the great problem of interstate commerce was born. Fulton's company contended that no boats but theirs could navigate the waters of New York, even to carry passengers and freight across the Hudson River from New Jersey; but Chief Justice Marshall denied the authority of the state and upheld that of the nation over commerce passing from one state to another. That merely local question settled, the problem did not present itself again for many years.

It was hardly possible and not at all necessary for Congress to regulate interstate commerce by stage-

coaches. Until the steam railroad came, there was no interstate commerce by land which demanded national attention. Even the railroads at first were so local in character that few of them crossed state lines. They ran only short distances, and passengers and freight were transferred from road to road.

When the era of combination came, the little roads were joined together to form the big trunk lines that now often span half the width of the continent and do business in a score of states. As these great lines of commerce spread over the nation, they escaped all governmental control and literally became a law unto themselves. The states were forbidden to interfere with them, and the nation neglected its power and duty.

When New Jersey gave a certain company the exclusive privilege of carrying passengers and freight across the state on the line of travel between New York and Philadelphia, Congress first woke to its responsibility and passed a law in 1866 forbidding a state to obstruct the flow of commerce between the states, after which the national Legislature fell into another sleep of twenty years. Some western states seeking to regulate the charges on their products shipped to the New York market, the Supreme Court of the United States forbade them and declared that they were usurping the functions of Congress; but Congress slept on while the abuses grew, and the Standard Oil, the sugar, and other corporations fattened into giants on rebates and all manner of unjust favors, which the railroads, often under coercion, yielded to big shippers.

Not excessive rates, but unequal rates and facilities, were the worst offenses against justice and the general welfare. The railroads had become, under the protection of the law, the highways of the nation, even as the streets are the highways of the city. That one citizen should have the use of the national highways on better terms than another, was as demoralizing and intolerable as if a municipality should favor one citizen at the expense of another in the use of the municipal highways, telling one merchant or truckman or cabman that he could ply his trade in the streets to the exclusion of a competitor.

To establish equality on the rail and to "regulate commerce among the states," Congress passed the Interstate Commerce Law and established the Interstate Commerce Commission.

Being virtually out of business at the time and his party in power at Washington, Mr. Moseley, complying with the advice of his brother-in-law, Mr. Spofford, who outlined a plan of procedure and gave him letters to leading statesmen, applied to President Cleveland for appointment as one of the five members of the proposed commission. Another of his advisers and supporters was his friend, John Boyle O'Reilly, who personally indorsed him to the President. The work made a special appeal to his interest, and his fitness for the place as well as his popularity brought him the cordial indorsement of nearly the entire membership of the Massachusetts Legislature, regardless of party lines, including the lieutenant-governor and the president of the Senate, both Republicans,

the mayor of Boston, prominent business men, and railroad officials as well as labor leaders.

The act limited the President to the appointment of only three members from his own party, and Mr. Cleveland felt that the Democratic places should go to the Democratic sections, and that one of the two Republicans whom he was required to appoint should come from Republican New England. This being his view of the matter, he could not consider Mr. Moseley in his selection of Commissioners.

Mr. Cleveland, however, had his own original methods of utilizing men, and if a man commended himself to his shrewd judgment of character, he was likely to keep him in mind until he had found some place for him where he could be useful to his administration. He could not, in accordance with his geographical rule, make Mr. Moseley an Interstate Commerce Commissioner, but he did not forget him.

As the time drew near for the organization of the new body, the President sent for Patrick A. Collins, the leading Democratic congressman from New England and chairman of the Democratic state committee of Massachusetts, and told him that he would like to have Mr. Moseley appointed Secretary of the Commission. Mr. Cleveland was very much in earnest in his desire to see the Commission well started. He had gone outside his party to select for the chairmanship the ablest available lawyer in the country having an acquaintance with the railway business. Thomas M. Cooley, a distinguished jurist and an eminent author of standard works on cer-

tain branches of law, was induced to resign a railway receivership, which was paying him \$25,000 a year, to become chairman of the Commission at a salary of \$7500, so strongly did the President impress him with his sense of the importance of the public service to be rendered.

Mr. Cleveland told Mr. Collins that he believed the Secretaryship would prove to be an important post, and that he was anxious to see it occupied by a man the equal of the Commissioners in ability. The suggestion was original with the President, and it took Mr. Collins and, in turn, Mr. Moseley himself by surprise. The latter, in response to a summons, went to Washington to see the President, whose good opinion of him was confirmed by their interview.

Acting entirely on a hint from the White House, the Commissioners at their first meeting on April 19, 1887, elected Edward A. Moseley, Secretary. Judge Cooley was chairman, and his associates on the Commission were William R. Morrison of Illinois, for twenty years a Democratic leader in Congress and until within a few weeks the chairman of the House committee on ways and means; Augustus Schoonmaker of New York, Aldace F. Walker of Vermont, and Walter L. Bragg of Alabama.

CHAPTER VI

THE NEW SECRETARY

THE new Commission was in a difficult situation. No path of duty had been blazed for it. The law creating it was an experiment in a new field of Federal activity and was yet to be tested by experience and interpreted by the courts. Its methods of procedure remained to be devised. Public opinion expected wonders to be performed, while, on the other hand, the railroads conceded little or no rightful authority to the Commission to meddle in what had been exclusively their own business for half a century.

The Commissioners were strangers to one another, with ideas and temperaments yet to be harmonized. Their executive officer, the Secretary, was wholly unknown to all of them. They had taken him on President Cleveland's faith, and not improbably or unreasonably some of them may have regretted that they had not been left free to consult their own personal preferences.

It must be admitted that for the first task before him, Mr. Moseley had no special experience and no natural aptitude. This was the work of establishing the routine of his office, and tangling it up in the inevitable red tape of a governmental bureau. Those were the very things of which he had always been impatient in his private business, where he had slighted or evaded office work and

clerical details as too irksome to be borne. He had chosen, as far as he could, to live his life out under the sky. Now, he found himself primarily in the relation of a clerk to a court, and he knew nothing of law and judicial forms.

His innocence of official formalities was peculiarly trying to Chairman Cooley, who had sat for thirty years on the bench of the Supreme Court of Michigan and had never before seen a high officer of the court going about his duties in his shirt sleeves merely because the weather chanced to be hot, and calling out to his assistants in the free and hearty tones of a logging camp. The Secretary's manners certainly were then as ever most unofficial, although filled with the spirit of kindness and simple courtesy. In his first contact with men, he was not likely to appear to the best advantage. He was never glib of tongue, and, while boldly self-reliant and independent, he was often reserved before a stranger to the point of seeming shyness.

More than one of the Commissioners shared Judge Cooley's disappointment in him in those early months, when he and they were working out their novel problem each in his own way. The misunderstanding, which is both amusing and pathetic in the light of his subsequent relations with them and success in his office, nearly culminated in a direct request to the President that he permit the Commission to make a change in the Secretaryship. Mr. Moseley's readiness to take responsibility in the absence of the Commission from the city only alarmed the Chairman, and when in due time the doubters saw

order in the affairs of the bureau miraculously emerging from chaos, they still doubted, and suspected that some subordinate of the Secretary must be bringing it forth. When at length — and it was not long — they came to know the man, his versatility, his energy, his persistence, his sound judgment, his knowledge of men, his loyalty, the Commission gave him its confidence without measure and took him into its inner councils.

Reports of the early dissatisfaction with him had reached the White House, and President Cleveland was gratified now by the proved fitness of the man whom he had chosen for the Commission. He always regarded Mr. Moseley with pride as one of "my boys," and Col. Daniel S. Lamont, Secretary to the President, said in a letter under date of July 5, 1888, "We all like Moseley very much, and he is everywhere here respected and appreciated."

The venerable and learned chairman of the Commission leaned on the Secretary with somewhat of the trust and affection of a father with his son. In their drives and in their evenings together, the Judge reasoned out the underlying principles of laws in their relation to commerce, and soon found an apt pupil in his lay companion, and a vigorous and clear-headed adviser as to the practical aspect of the problems with which his theories dealt. He urged and aided him to study law and become a member of the bar.

Their correspondence, when the chairman was away from Washington, gives glimpses of the unusual intimacy that grew between these men, separated by the gulf of

years and personal experience. When Judge Cooley was compelled by ill health to resign from the Commission in 1891, he wrote to the Secretary, "I shall ever cherish with the liveliest sentiments of affection and respect the recollection of my association with you while my connection with the Commission continued." It is well within bounds to say that this friendship was the closest and warmest that Judge Cooley formed in the course of his service in Washington, and it lasted the remaining years of his life.

This conquest was repeated by the Secretary in his relations with Judge Cooley's associates on the Commission and with each of their successors through the many years of his connection with the body. He made himself the friend of all, the new Commissioners turning to him as a safe guide, and the Commission as a whole confiding in his experience, discretion, and ability, looking to him for counsel in all things from the smallest personal matters to the gravest public problems.

"I wish you would please select a more suitable and agreeable apartment for my family before we return for the winter; my wife relies on your taste." That is one request from a Commissioner to the Secretary which gives us a glimpse of the unofficial responsibilities and tasks that he cheerfully bore, and there are other similar letters and telegrams to the same effect: "Please order the gas turned on"; "As you know almost everything, can you find out whether I can get a couple of good servants in Washington, a cook and a second girl?"

One of his own letters to a commissioner who was

building a house in his home town is characteristic of his many-sided relations with the members of the Commission: "Don't hurry it. The longer it is in building, in the same proportion the longer it will stand. Then again be sure that everything is dry. Unless your lumber is well seasoned and dry, it is, to a greater or less extent, always a serious annoyance. The mitered joints come apart, the floor shrinks, etc. Where one is putting up anything like panel work, it is an excellent idea to put on a coat of the cheapest kind of paint on the back before nailing, as it prevents the moisture from coming out of the wood. I think there is a tremendous lot of fun in building a house, and you are apt to have more pleasure in building than in lodging in it. So, unless you have got other business in view, I would drag it along as long as possible."

Another Commissioner, in writing him in a vacation season, said: "Since everybody is to be gone, you will be able to have your own way without fighting for it. May you rest in peace!"

No doubt the Secretary did the homely and useful kindnesses requested of him as gladly and effectively as he conducted difficult negotiations with Congress and its committees and with the great departments on behalf of the Commission, which relied on his diplomacy and energy to promote its ends everywhere in Washington, and even constituted him its envoy to the White House on many important and delicate occasions.

Whatever the difficulty, and however badly tangled, the Commission always felt warranted in assuming that

"Moseley will fix it up." It was by no means unusual for him to see the President regarding the reappointment of Commissioners, and to bring back welcome assurances. Even when his efforts failed of success, they were so whole-hearted as not to fail of appreciation on the part of the disappointed member, one such, for example, writing him in these terms of gratefulness: "I want you to know how very highly I appreciate your earnest and sincere efforts in behalf of my reappointment. I feel that you did all that possibly could be done, and I trust that the day may come when I can reciprocate your great kindness."

Mr. Moseley was a militant Democrat in the beginning and a devoted Cleveland man. When the campaign of 1888 came and Mr. Cleveland was up for reelection, he had been in Washington somewhat more than a year, and was well established in the regard and confidence of the President, Colonel Lamont, and those in the inner circle. His eager interest in Cleveland's success led him to give the President a piece of advice which probably changed one chapter in the history of the time.

There was a vacancy in the Chief-Justiceship of the United States, and it was persistently reported that Edward J. Phelps of Vermont was to be appointed to that exalted office. Mr. Phelps, who was Minister to England, was in Washington apparently to receive the honor. The senators from his state, Messrs. Edmunds and Morrill, had signified their willingness to give him the two Republican votes that any appointee must have to be confirmed by the Senate where the Democrats were in a minority.

It was in the period when Parnell's campaign in behalf of Irish Home Rule had aroused the Irish race at home and abroad, and citizens of Irish birth or descent in this country were extremely sensitive regarding our relations with the British Government. Through Mr. Moseley's friendship for John Boyle O'Reilly, who, although a poet and not a politician, was the influential editor of the *Boston Pilot*, an Irish Catholic journal of national circulation at the time, he was conversant with the opinions and feelings of citizens of that race and faith. He knew that Mr. Phelps' deportment in England had given serious offense to the tens of thousands of organized supporters in this country of the Home Rule cause.

Others in Washington knew as well as he that the Phelps appointment would be most unwelcome to those people, but the White House seemed oblivious to that important political fact. It remained for him to sound the warning. When he called at the White House on this errand, the President was engaged and Colonel Lamont was out, whereupon he sat down at the latter's desk and wrote this note:—

DEAR COLONEL LAMONT: The appointment of E. J. Phelps as chief justice will play the dickens with us.

Yours,

NED MOSELEY.

That outspoken statement was like a gust of fresh air in the White House. Colonel Lamont showed the note to the President, and they summoned Congressman Patrick A. Collins, lately president of the Irish Land

League of America. Mr. Collins told the President that he did not wish to be placed in the position of assuming to be the spokesman of the Irish race on such a subject, and suggested that he call in other congressmen of Irish birth or extraction. Accordingly some thirty of them were hastily assembled, with the result that Mr. Moseley's impulsive remonstrance was vigorously indorsed, and the press received a brief statement from the White House somewhat in this form: "Those in a position to know the facts are only amused by the assumption that the appointment of Edward J. Phelps to the Chief-Justiceship has been decided on. Mr. Phelps is not a candidate, and his name is not under consideration." Mr. Phelps returned to his post in London, and eventually Melville W. Fuller was appointed Chief Justice.

When Mr. Cleveland was defeated, no one was more grievously disappointed than Mr. Moseley. He was much heartened by this prophetic letter from O'Reilly, and he took pleasure in sending it to Mr. Cleveland after four years, when the prophecy had been verified by events:—

The Pilot.

BOSTON, Nov. 26, 1888.

DEAR NED:

Forgive me — I have been out of Boston for a week, lecturing in Cincinnati; before that for over a week, buried in a poem for the negro monument. . . .

The campaign of 1892 has already begun, and the President will sweep the country, as sure as he lives, on the very issues which have beaten us this time. We tried to reap the crop before it was ripe; that is all. It was a good crop, and it will grow again.

Harrison is essentially an incapable man — at least for

a great place. He might do for the Senate, where individual judgment was not called for, as Bayard did for it. But when he comes to a place where his every word and act, or silence and inaction, are under the blaze and the microscope, he will fall short every time. As sure as the sun is over him, a small nature cannot act largely under supreme conditions; and as President he cannot shuffle in doing, or evade consequences. Every mistake of Mr. Cleveland has been due to Bayard or other ministers; every mistake of Harrison's will be his own. Governor Hill cannot last even two out of the four years. He lacks moral fiber; and by the new states to be made next year, New York will not be as much the Key State in '92 that it has hitherto been.

Harrison's first wet blanket on the enthusiasts will be the throwing over of Blaine. His selection of a secretary, also, is simply fatuous. Depend on it, he will go from blunder to blunder, for pettiness is a blunder in a President.

Cleveland will grow stronger every year. His defeat is unnatural; every intelligent Republican secretly admits that it was accidental. Profoundly, I believe, dear Ned, that we were defeated by Bayard, Phelps, and Endicott. The only wonder in my mind is that 100,000 instead of 10,000 New York Irishmen were not seduced in their disappointment and indignation. Bayard deserves the obscurity into which he goes. An American minister who could insult twenty million Irish Americans, without cause, and injure their interests by obstructing Home Rule for Ireland, as Phelps has done, deserves the contempt of all men. The fool has helped no one but Harrison, and he has hurt every one else.

I hope the President will withdraw the treaty of extradition, and appeal to the manliness and morality of Canada to give up our refugee swindlers without bargaining for the giving up of refugee politicians, which is wholly a British and not at all a Canadian interest. And I also hope that the President will reassert his common-sense tariff reform principles, and declare that the intelligence of the country will within two years compel the change, which he proposed and our party formulated.

And now, dear Ned, let me say how sorry I am to think that your faithful and splendid work is to end in getting beheaded. Don't fret — we shall know a lot more in '92. You can get along without trouble; we shall be busy from the very beginning.

More time for a good canoe trip next year.

Good-by, dear old man.

Affectionately yours,
JOHN BOYLE O'REILLY.

CHAPTER VII

UNDER FIVE PRESIDENTS

WITH the inauguration of Harrison, in 1889, the Republicans came back to claim their own. There was a clean sweep of all places outside the classified civil service.

The Interstate Commerce Commission was a bipartisan body under the law creating it, and Mr. Moseley felt that properly the Secretary might be exempted from the general rule by which the victors took the spoils. He was not appointed for a limited term, but to serve at the pleasure of the Commission. He therefore prepared to defend his office. The term of one of the three Democratic Commissioners expired in 1891, and a Republican, Martin A. Knapp of New York, took his place, thus giving the Republicans a majority on the Commission.

A Republican candidate for the Secretaryship opened an aggressive campaign against its Democratic incumbent, but Mr. Moseley showed himself a better campaigner. All the old Commissioners were cordially in favor of his retention, but the Republicans among them might have found it hard to resist a partisan pressure for his place. Mr. Moseley, however, had known no party in the conduct of his office, had made many influential friends among the Republicans, and was able to bring to bear more powerful Republican support than his Republican opponent.

The Commission was deluged with strong indorsements of him, Senators Hoar and Dawes of Massachusetts, Senators Blair and Chandler of New Hampshire, Senator Cullom of Illinois, the father of the Interstate Commerce Law, and Gen. Russell A. Alger of Michigan being notable among those who actively joined in his support. Means were found of pulling Senator Quay of Pennsylvania, the chairman of the Republican national committee, away from the opposition to him.

Senator Chandler wrote: "In my belief Mr. Moseley has the confidence and respect of the leading men in New England without regard to party politics." William W. Crapo, a distinguished ex-congressman from Massachusetts, in writing to Colonel Morrison said: "I regard him as eminently qualified for the place. You know my politics. I am as ardent a Republican as when we journeyed together to Louisiana in 1876 to discover who had been elected President. Mr. Moseley is a Democrat. If he is to be displaced simply to put a Republican into the position, I shall regard it as a grave mistake. Your board ought not to be administered as a party organization, and the public will have confidence in it only so far as it believes it to be free from party influence."

Senator Dawes said, in his indorsement: "I have known your Secretary, Mr. Edward A. Moseley, for many years, and although differing from him in politics, I have not failed to recognize and appreciate his ability and fidelity in his office. I should regret exceedingly to see him displaced, and I cannot conceive of any exigency of the

public service that would require it." The foremost Republican of the day, James G. Blaine, wrote to Commissioner Veazey, "I hope you will not consider me meddling if I express my warm wishes for the retention of Mr. Moseley."

The officers of the brotherhoods of railway employees joined the representatives of the railways themselves in supporting a secretary who had shown himself fair to all. Mr. L. T. Michener, a close friend of President Harrison, writing as "counsel for a number of railroad companies," said, "I have never heard from railway officials or from counsel anything but kind words for Mr. Moseley, for they all appreciate his obliging disposition and realize that he has a thorough knowledge of the law and practice before the Commission." Mr. George G. Greene, general counsel of the Lake Shore and Michigan Southern Railway, addressed Chauncey M. Depew, the president, earnestly suggesting that he intercede for Mr. Moseley, saying, "I have had opportunity and occasion to know something of his methods and administration of affairs in his office, and I cannot commend him too highly." Messrs. Britton and Gray wrote as legal representatives of "some 10,000 miles of railroad":—

Mr. Moseley has, in our frequent contact with him, given demonstration of his complete absorption in the work of the Commission and the duties of his office connected therewith. Whenever we have met him accidentally outside, the same absorption in his work and duties was manifested by his constant discussion of the interstate commerce business in some phase or other. In litigation brought by the Commission to enforce its orders, we seriously doubt whether any counsel acting for the United

States or the Commission could exhibit greater enthusiasm or a greater degree of industry in preparing the case on the Commission's behalf, and in running down all sources of information and proof. We have never regarded the office as a political one, and are honest in the conviction that certainly Mr. Moseley has never given it any such turn. . . . His readiness to answer all inquiries, to furnish all information possible or proper, and to give all parties the entire facilities within his reach for their benefit, coupled with his zeal and interest in sustaining the Commission and forwarding its important work, lead us to believe that no one else can be found who can better fill the office, nor do we believe that any one can be found to measure up to Mr. Moseley's present experience and capacity to fill his important office.

The most significant among the many letters on the subject, because of the acquaintance of the writer with Mr. Moseley's work, was the following from Mr. George G. Crocker of the state railroad commission of Massachusetts:—

BOSTON, November 19, 1891.

HON. GEORGE F. HOAR.

MY DEAR SIR:

You ask me what is my opinion of Mr. Edward A. Moseley, the Secretary of the Interstate Commerce Commission, and of the value of his services. I take pleasure in replying that, as railroad commissioner, I have on several occasions called upon Mr. Moseley for information in regard to the work of the Interstate Commerce Commission and other matters bearing upon the duties of the board. I have always found him not only willing, but prompt, in responding to any request for information, and I have further found that he has a wide and valuable knowledge of railroad men and railroad affairs. I regard his experience in the position as of great value to the public, and should certainly feel that the usefulness of the work of the Commission to the public would be im-

paired if by substituting another man his experience should be sacrificed.

Especially of late have I had occasion to appreciate his ability and the personal interest which he takes in the duties of his office. At the last convention of the railroad commissioners, held at the rooms of the Interstate Commerce Commission in Washington, I was appointed by Judge Cooley as the chairman of a committee of five commissioners from different parts of the country to urge upon Congress the adoption on freight cars of uniform automatic couplers and certain other safety appliances.

Mr. Moseley consented to act as secretary of the committee, and as such he has devoted a large amount of time and thought, ability and experience, towards securing for the committee returns from the railroad and transportation companies of the country. These returns have further been classified by him and statistics compiled, and the report made by him at a meeting of the committee held in New York proved to be most instructive, and specially impressed the members of the committee with surprise that he was both able and willing voluntarily to work in such an indefatigable spirit.

I should certainly deplore any action looking towards supplanting him, and believe that such action would neither be in the interest of efficiency of service nor consistent with the principles which must be adhered to if high standards in our public service are to be maintained.

Most truly yours,

GEORGE G. CROCKER.

Mr. Crocker gave not only the chief reason for retaining the Secretary, but Mr. Moseley's own real reason for wishing to be retained, and that was the opportunity for service which the movement for safety car appliances had opened to him. The secretaryship as a job was not worth fighting for. It was a laborious post, the honor and emolument of which were alike small.

The effort to displace him served to call out this expression from the chairman of the Commission in a letter to the officers of the Brotherhood of Locomotive Engineers:—

ANN ARBOR, November 19, 1891.

MESSRS. P. M. ARTHUR, G. C. E.,
AND T. S. INGRAHAM, F. G. E.

Replying to yours of the 17th instant, I beg to assure you that I am not in sympathy with any proposal to remove Mr. Moseley, the Secretary of the Interstate Commerce Commission. I know of no reason which could justify the removal. He is a faithful, diligent, and courteous officer, fully acquainted with the duties of the position, and ambitious to perform them to the satisfaction of the public and of all concerned. I think his removal would be a great wrong to the public service.

Very respectfully yours,
T. M. COOLEY.

Finally, Mr. Moseley received this conclusive assurance from Mr. Joseph H. Manley, the leader of Republican politics in Maine, "Don't worry; you are all right." The Secretary not only held his place, but removed it forever from the scramble for partisan spoils. He was not called upon again to lift a finger to retain it, although at one time in the course of the Harrison administration it was said that the only other Cleveland appointee left in a prominent post at Washington was the register of the treasury, General Rosecrans.

All but one of the original Commissioners retired within five years of the organization of the Commission, and with the retirement of Colonel Morrison in 1897, the last member of the first Commission was gone. The Secretary survived all changes among the Commissioners

and all changes of administrations. First and last he served with nearly a score of Commissioners and under five Presidents—Cleveland, Harrison, McKinley, Roosevelt and Taft. Parties and Presidents came and went, but he, almost if not quite alone among the more conspicuous officials at Washington, stayed on undisturbed in his unique place, where it may be said he created a part for himself.

CHAPTER VIII

A CLEVELAND INCIDENT

MR. MOSELEY'S firm hold on the good will of the Commission, when a majority of its members were not of the party with which he acted before his appointment, was put to the test by a situation that Grover Cleveland unwittingly created in the campaign of 1892.

Mr. Cleveland received a letter from a man styling himself the editor of a newspaper called the *Irish Nationalist*, and representing himself to be a Democrat who wished to clear the party candidate for President from the charge that in his former administration a treaty had been negotiated with Great Britain permitting the extradition of political refugees. The subject being one with which Mr. Moseley had dealt in the campaign of 1888, Mr. Cleveland referred the inquiry to him in the following letter:—

(PERSONAL)

GRAY GABLES, BUZZARDS BAY, MASS.
August 9, 1892.

EDWARD A. MOSELEY, Esq.

MY DEAR SIR:

The inclosed letter from John F. Kearney was received a day or two ago. You will see that inquiries are made therein in relation to a subject with which, if I am not mistaken, you are quite familiar. I refer to the British

extradition treaty, which was presented to the Senate during my administration as President. I send this letter to you for the reason that I believe you are better able to answer it than I am; and if you see fit to write Mr. Kearney the truth in relation to this matter, as you understand it, I shall be glad. I hope that you may be able to do this on your own account entirely, basing your reply on information which you yourself obtained, and merely mentioning the fact that I have referred the letter to you on account of your great familiarity with the subject.

Very truly yours,
GROVER CLEVELAND.

Mr. Cleveland, in his confidence in Mr. Moseley's friendship for him and ability to answer the inquiry, imposed a delicate duty on a man holding office under the opposing candidate for President. Mr. Moseley wrote to Kearney, saying that the treaty as sent to the Senate by President Cleveland contained no such provision. On further inquiry about Kearney, he became convinced that the man was trying to turn a political trick. He warned Mr. Cleveland against him and received the following reply:—

(PERSONAL)

GRAY GABLES, BUZZARDS BAY, MASS.
October 8, 1892.

EDWARD A. MOSELEY, ESQ.

MY DEAR SIR:

I have received your letter of the 1st instant accompanied by a statement which you prepared in relation to the Phelps-Rosebery treaty. I thank you most sincerely for the labor which you have expended in this matter and for the very satisfactory presentation which you make of the question. I also desire to express my obligation to you for having made inquiry concerning the

gentleman who asked of me the information. Of course, I could judge nothing of his character and purposes except as they were made apparent by his letter to me.

The information you receive concerning him, if entirely reliable, and if he continues in the same condition as described by your correspondent, properly caused you to hesitate before putting the document which you have prepared in his hands. My own idea is that you could not have done a better thing than to submit it to the judgment of Mr. Quincy, for I suppose its transmission to him will perhaps put it in the way of being passed upon by the members of the national committee as well as by himself.

Assuring you of my appreciation of the efforts you have made to comply with my request in this matter, I am,

Yours very truly,

GROVER CLEVELAND.

Another man next took up the subject and came to Washington to see Mr. Moseley. He represented himself as having come directly from Mr. Cleveland, whose visiting card he presented as evidence of good faith. After discussing the treaty with this new inquirer, Mr. Moseley became suspicious of his caller's sincerity, and the man admitted that he was working the thing up for the Republican campaign.

That admission of duplicity naturally aroused Mr. Moseley's indignation, if not belligerence, and the man caused him to be arrested in the middle of the night on the charge of having threatened his life, a charge which was vigorously denied. The arrest was made at an hour when it was difficult for Mr. Moseley to call friends to his aid, and he was therefore detained at the station until morning. It was an unpleasant situation, apart

from the indignity put upon him, to be involved in a campaign from which he had tried to keep free because of his position under a Republican administration. There is another letter from Mr. Cleveland, expressive of his sympathy in the annoyance he had innocently brought upon him:—

12 WEST 51ST STREET, NEW YORK CITY,
October 21, 1892.

EDWARD A. MOSELEY, ESQ., WASHINGTON, D. C.

MY DEAR SIR:

I thank you for your letter of October 18, and the one you inclose from your friend at Newburyport, Massachusetts. I have read the letter with very great satisfaction and return it to you, thinking perhaps that you would like to preserve it.

This corroborates other evidence which has come to hand that our veteran soldiers cannot be played upon to the same extent as heretofore by demagogic practices.

Mr. — to whom you refer in your letter, came to me and asked me in regard to the treaty, apparently in good faith. I answered him as well as my recollection permitted me to, and finally said to him that it was a matter entirely within your knowledge and that your memory upon the subject would probably be better than mine. The questions which followed that in relation to the treaty, satisfied me in a very few minutes that his interview was not sought in good faith, and I peremptorily declined to have any further conversation with him. Since that time I have received from him sundry and divers letters, some of a very peremptory, not to say threatening kind, to which I have paid no attention; but I did not understand until the receipt of your letter the meaning of the reference he made to your threatening his life.

My impression is that your treatment of him, as described in your letter, was exactly what he deserved.

Very truly yours,

GROVER CLEVELAND.

Mr. Moseley was furious with rage over his experience, but the election soon came and the incident was closed with the campaign. After the election, he wrote Mr. Cleveland this letter:—

November 14, 1892.

HON. GROVER CLEVELAND,
12 West 51st Street,
New York City.

DEAR MR. PRESIDENT:

I knew you would be elected—and of course you know I hoped so as never before—when I had to face the humiliation that they put upon me on account of that cracked-brain scalawag,—,—but I was not prepared for such a deluge. The atmosphere in Washington is changed already—there is life and cheer in it, and I tell them they need not think that the triumphant Democracy with its access to power is going to abuse it. They did raise the devil with me that night, fairly pulling me out of a sick bed in my nightshirt and locking me up in a dirty cell.

You will be sorry to learn of my dear mother's illness. That was the only news that saddened me at all in the midst of the glorious election reports. She is over eighty, and I grieve about it. I write you about her because I recall, when you told me in the White House one St. Patrick's Day, that the patron saint had the advantage of you by a day, your tenderness as you told me of your mother and what a sure guide she had always been and how you always missed her steadfast and supporting friendship. That came home to me the more because my mother rejoiced at your victory almost as much as your own would have done.

I inclose an old letter of our dear Boyle O'Reilly's, which you have never seen. Do read it through and see if it is not prophetic.

With great regard and respect,
EDWARD A. MOSELEY.

Mr. Moseley's relations with Mr. Cleveland in the latter's second administration were cordial and influential. When a vacancy occurred in the Commission, the President received many requests for Mr. Moseley's appointment as a Commissioner from the leaders of the railroad brotherhoods, Chief Arthur of the locomotive engineers expressing the general feeling of the unions when he said in his letter, under date of March 19, 1894:—

We would urge, in view of the many questions that are daily arising which so directly concern railroad employees, his appointment, not because we have any reason to think the class of men referred to would receive any favors at his hands that justice would not dictate, but because this great army of men engaged in the most hazardous employment that the country has, have no one in the Commission that has any practical knowledge of them or their duties, and certainly the welfare of these men and of our common country of which they are no small part, entitles them to an unbiased representative, whom they respect and in whose judgment, impartially given, they can have confidence.

Mr. Cleveland, however, felt now as he felt when Mr. Moseley's name was first presented in 1887, that he should not choose a Democratic member from Republican New England. With that decision, Mr. Moseley relinquished his ambition for a seat on the Commission, and never again turned his hand over for promotion or preferment of any kind. This was fortunate for him and his work, for as a Commissioner his tenure might have been less permanent, and it is extremely doubtful, had he been one among the several members of the Commission, if he could have done as much as he succeeded in doing in the fifteen crowded years that followed.

CHAPTER IX

TAKING UP HIS LIFE WORK

BEHIND every law there is a man. Edward A. Moseley was the man behind the act of Congress "For the Protection of Travelers and Employees on Interstate Railroads." The law had other friends as loyal as he and whose fair share of the credit no one will deny. He organized and conducted the remarkable campaign that placed it on the statute books; the Interstate Commerce Commission looked chiefly to him to set it in operation; under the orders of the Commission, he took charge of its enforcement; for twenty years he led in the running fight for its life in the courts, and at last really gave his own life in defense of the cause.

The Interstate Commerce Act of 1887, which created the Interstate Commerce Commission, made no provision for the regulation of the conditions of travel and labor on the railways. It was strictly a commerce law, having to do only with questions of dollars and cents. Its sole aim was to protect property, and there was not a clause in it for the protection of men. It was wholly an economic statute, and in no sense a humane measure. The Interstate Commerce Commission was constituted and organized to look after corn and oats and live stock, but not human beings.

The framers of the law are not to be censured for this

omission. The idea of the Federal government as a constructive force in the development of the nation had yet hardly dawned on the public mind. Its sphere of duty was still supposed to be chiefly confined to repelling invasion, suppressing rebellion, and providing judicial tribunals for umpiring disputes between citizens of different states.

Aside from scattering garden seed over the land and attempting to give an incidental protection to manufactures in levying customs duties, the national government was not expected to do anything to help the American people. The dogma of *laissez faire* was unchallenged, and it was a cardinal principle of statesmanship to leave the people to look out for themselves, or, if they could not do it, to let the states guard their interests. The government of the United States had scarcely enlarged the field of its activities in the hundred years of its existence. To adopt the policy of interfering between the railways and the shippers, therefore, stretched the exercise of Federal power quite as far as any one seriously thought of expanding it in 1887, and it is not to be wondered at that no suggestion was made to interfere between the railways and its own employees.

There was, however, one form of Federal service which held a peculiar interest for Mr. Moseley. The nation did provide means of saving life at sea and on the lakes. It had erected lighthouses and other guides for the benefit of marine commerce, and it provided a life-saving patrol on the coasts. Mr. Moseley felt a natural sympathy with that beneficent work. He was proud of his

membership in the Merrimac Humane Society of Newburyport, of which his father was president for a long time, and which his grandfather had founded for the rescue of sailors before there was a United States Life-saving Service.

From boyhood he had vainly coveted a Massachusetts Humane Society medal, and he used to confess with a smile that he never went swimming where there were others in the water that he did not keep his eye open for an opportunity to win the medal. He could make up a laughable story of his patient waiting and watching on a crowded beach and his persistent ill luck in never being about when a bather caught a cramp, or when some novice was drawn down by the undertow.

It was his ambition at one time to be superintendent of the United States Life-saving service, and, the year after his appointment to the Secretaryship of the Interstate Commerce Commission, he requested that he be considered for the vacancy whenever a change should be made in the bureau. Akin to this humane interest was the interest he had developed in the problem of ameliorating the condition of laboring men, and he expressed an ambition to be Commissioner of Labor, when that office was in process of reorganization in 1888.

Neither of these fields for congenial service opening to him, he created a far larger field for himself. He had come to Washington directly from his seat in the Massachusetts Legislature, generally the most advanced legislative body in the country, notwithstanding the conservative repute of the Old Bay State. There he had given

much earnest attention to the many measures pending for the regulation of labor. As a member of the joint committee on railroads, he had considered various means of reducing the perils of trainmen.

Once when a bill requiring a certain fixture on freight cars was under consideration, he had heard a railway official denounce it as an outrage. "Why!" the official exclaimed, "every time a fellow grabbed that thing, he would give the car such a wrench, it would spring a leak and ruin the contents." That emphasized to Mr. Moseley the conflict between the point of view of humanity and that of business. The objector was thinking of the leaky car and the bill for the damaged merchandise, and not of the human being, the brakeman, who would seize the fixture only to save his life. He saw that the gulf between those conflicting points of view was so wide that the law alone could bridge it.

He found that a state law was useless. The efforts of the Commonwealth of Massachusetts to promote the safety of railroad employees had only made a bad matter worse. State laws had proved themselves entirely ineffectual to meet the case, because they were so diverse and inconsistent. For instance, a car fitted to-day with the coupler prescribed in Massachusetts might next month, in the movements of interstate commerce, find its way into Texas, Nebraska, or Colorado, each state having a different coupler in conformity with its own laws, but non-interlocking with the couplers of other states, thus increasing rather than diminishing the loss of life and limb.

Still no general movement was started looking to the Federal power for relief. The Railroad Commission of Massachusetts said in its report for 1886:—

It has seemed to the board an unsound argument that one state should do nothing because it cannot do all. The natural tendency of such an argument is to throw upon Congress the duty of legislation for the protection of train hands who are engaged in interstate commerce. For many reasons it seems to us that the desired end should be obtained by the harmonious action of the state government rather than by the intervention of Federal authority.

In two years more the Massachusetts Commission, through Chairman Crocker, had reached the conclusion, announced in its report for 1888, that "Congress should interfere to prevent the yearly mutilation of employees." Mr. Moseley at the same time was doing what he could in Washington to bring the responsibility for the situation home to the only authority really competent to deal with it. Having gained the confidence of Chairman Cooley, he introduced the subject to his favorable consideration and to the sympathetic attention of the other Commissioners. He realized as well as they that the statute under which they were working gave them no authority in this matter.

The Federal government, in adopting the law, had asserted its power to regulate commerce between the states, but not the instrumentalities of that commerce, the cars in which it was carried. How could the Commission take note of anything lying outside the scope of its organic law?

Mr. Moseley, however, joined in plans for a national

movement in support of his position. The Massachusetts Legislature memorialized Congress for legislation on the subject, the prayer being presented to the Senate by Senator Hoar on March 31, 1888. Mr. Moseley's friend, Mr. Collins of Massachusetts, introduced in the House a resolution, directing the Commission to investigate the matter. Without waiting for Congress to act, the Secretary called upon the railroads, with the sanction of the Commission, to report the number of persons killed and injured in coupling cars.

When the State Railroad Commissioners met in Washington in March, 1889, to consider the supervision of railroads in general, Chairman Cooley presided over their convention. Mr. George G. Crocker of the Massachusetts Commission offered a resolution urging the Interstate Commerce Commission to consider what could be done to prevent the loss of life and limb in coupling and uncoupling freight cars used in interstate commerce and in handling the brakes of such cars.

With the adoption of that resolution, the states, which might have been jealous of Federal interference, were placed on record as in sympathy with the cause, and afterward Mr. Crocker was appointed chairman and Mr. Moseley secretary of a special committee on safety appliances. This Crocker committee proved to be an active influence in promoting the movement.

The first mention of the subject in the annual reports of the Interstate Commerce Commission was made in 1889, but the Commissioners confessed that they were not prepared to recommend a national law because the difficulties

of formulating and enforcing such a statute seemed to them great, if not insurmountable. The Secretary, however, went on with his work of collating the casualty reports from the railroads, the totals of which constituted a staggering argument for action, and he employed every possible means of driving the argument home. A graphic portrayal of the situation was made by him in a public address, delivered before the Brotherhood of Railroad Trainmen in Faneuil Hall, Boston, in the course of which he said:—

There is something appalling in the statement that more hard-working and faithful railway employees in the United States went down in sudden death last year than the entire number of Union men who died at the Battle of the Wilderness; nearly as many as those who died the bitter death at Spottsylvania; more than three times the number of the Union dead at Lookout Mountain, Missionary Ridge and Orchard Knob combined, and that more of the grand army of railway men of this country were cut and bruised and maimed and mangled last year than all the Union wounded and missing on the bloody field of Gettysburg; nearly equal in number to the wounded and missing in the reign of death and devastation at Shiloh, first and second Bull Run and Antietam combined; while there traveled under the care and guidance of this clear-headed and vigilant army of railway workers 560,958,211 passengers with so much ease and safety that only one in every 1,491,910 was killed and only one in every 173,833 was injured from all causes, including their own carelessness.

We are standing upon the shore of the Atlantic. Looking to the east, we behold a broad expanse of water. Upon this coast—within sound of the roar of the surf—not a storm arises but a prayer goes up from the good housewife for the safety of the poor sailor struggling with the elements. Why is this solicitude so fervently expressed?

From time immemorial the limitless deep has been associated with peril to human life, and the most anxious feelings of our race have been evoked in behalf of those "who go down to the sea in ships." For centuries every civilized language has, in prose and poetry, extolled the heroism of the sailor, and sympathized with the dangers and sacrifices of the toiler who earns his livelihood upon the unstable elements. The sound of the waves and the heavy blasts call attention to the fact and tend to perpetuate one of the finest traits in our human nature — a brotherly interest in the welfare of a worthy portion of the community.

And yet, how little of this commendable sympathy is bestowed on the equally brave and far more exposed toiler working in the freight yard or on the rail! He, too, is traveling a deck. To be swept from it will hurl him to eternity in a far more sudden and agonizing way than the poor fellow carried by a wave from the deck of a vessel. The latter, in many instances, has a chance — with the help of a resolute heart and sinewy arm — of rescuing himself from a watery grave. How vast the difference with the victim of the railway, the great modern agent of civilization, as essential to human intercourse as the ship has been since the earliest times!

Yet dangers to the trainmen do not come home to the good people. Their attention has not yet been sufficiently awakened to the subject. Let them think of the fated fellow who slips between the cars and whose only possible escape is by a desperate grasp at their icy sides; or of him who, swept from the running board of the rapidly moving car, is hurled to instant and certain destruction.

Dangers beset him everywhere. As he works amid an intricate warp of iron rails, the next step may fasten his heel in the deadly unblocked frog, holding him in a vise, suffering an agony of suspense, while the wheel bears down upon him to mangle his poor body and crush his life out.

Let people reflect that it requires fully as much courage and nerve to peer out into the darkness and catch sight of a few feet of gleaming rails in front, all else the blackness of night, as it does to stand on the bridge of a ship

and with straining eyes endeavor to avoid the passing vessel, the derelict, or the iceberg.

Even the railroad employees themselves had to be aroused from their indifference or despair. Mr. Moseley did not find it an easy task to communicate to them his enthusiasm in their behalf and his confidence that something could be done to lessen the perils amid which they labored and to reduce the awful rate of slaughter on the rail, to which their life had accustomed them.

They had no legislative agents in Washington in those days when Mr. Moseley began his work, and there was not a line in the federal statutes for the protection of the eight hundred thousand railroad workers. Employed in a business that overlapped state lines, the state could not effectively protect them, and the nation had neglected them. They toiled in what was legally and practically no man's land. The new champion who had taken up their cause at Washington, therefore, had first to convert their leaders and convince them that by joining with him Congress could be compelled to act in their behalf. They soon became infected, however, with his zealous spirit, and under his expert guidance they made their wishes known to senators and representatives.

While the Commission gave the appalling record of the casualties in its report in 1890, that conservative body did not venture a comment on the figures. In 1891, while it still refrained from urging any regulative law, it incorporated in its report an extended review of the matter over the signature of Secretary Moseley. Finally the question found a place in the President's message, when

President Harrison declared that "it is a reproach to our civilization that any class of American workmen should, in the pursuit of a necessary and useful vocation, be subjected to a peril of life and limb as great as that of a soldier in time of war." Newspapers and magazines turned the subject over and over, and gave voice to the swelling public demand for remedial legislation, while Mr. Moseley, as the general in the field, directed the movement against the "deadly link and pin," and the hand brake.

The former required a man to step between the cars and take his life in his hand at every coupling, while the latter required the brakemen to imperil their lives on the narrow and often slippery running boards in the darkness of night, and in gales that sometimes swept them away; to leap from roof to roof of swaying cars, to jump from box cars to flat cars and twist the treacherous brakes whenever a train was to be brought to a stop.

The remedy was astonishingly plain — equip freight cars with automatic couplers and air brakes the same as passenger cars. The only obstacle was the expense — but that was a large one. For there were more than 1,200,000 freight cars, and very few of them had automatic couplers and air brakes. The cry went up that it would cost the railroads \$100,000,000 to comply with such a law. The \$100,000,000 was placed in the scales against the totals, which Mr. Moseley was collecting and publishing, of the yearly sacrifice of thousands of killed and wounded. And manhood outweighed money.

CHAPTER X

THE FIRST SAFETY APPLIANCE ACT

THE campaign for the Safety Appliance Act was a long and arduous one. Mr. Moseley supplied the committee reports in both the Senate and in the House, the material for speeches of senators and representatives, for the annual reports of the Commission and for the messages of President Harrison, who thrice commended the measure to Congress. He marshaled the forces of railway labor for the first time in Washington, and skillfully pulled the wires leading to the seats of influence at either end of the Capitol. He brought such pressure to bear on both national conventions in 1892 as to cause the subject to be mentioned in the platforms of the Republican and Democratic parties. He steered and pushed the bill with all the adroitness and efficiency and with more than the ardor of an experienced lobbyist.

Indeed, his arts and his zeal brought suspicion upon him at first. He was seen to be a thoroughly practical promoter who knew the ropes, and not a wild-eyed zealot. Wherefore there were those who suspected he must be in the employ of some selfish interest, perhaps a patented coupler or brake. That he made a close poll of Congress like any trained lobbyist, is shown by a letter in which he told how the Senate did the bill to death in the session of 1891-1892. It was addressed to the President's

secretary, in reply to an inquiry from the White House at a time when General Harrison was preparing his last annual message:—

(CONFIDENTIAL)

INTERSTATE COMMERCE COMMISSION, WASHINGTON.

November 15, 1892.

HON. E. W. HALFORD, Private Secretary to the President,
Executive Mansion.

DEAR MR. HALFORD:

I desire confidentially to state to you that I heard of no opposition in the House of Representatives in relation to safety appliance legislation, except from Mr. O'Neill of Pennsylvania, who, in the committee, stated that he was opposed to any legislation on the subject. The House bill passed unanimously without debate or dissent.

In the Senate committee on interstate commerce it met with considerable opposition. In fact, Senator Hiscock declared that while he would allow the bill substituted for the House bill to be reported if a promise were made by the chairman, Senator Cullom, that it would not be called up last session, still he would fight the bill in every possible way, and in debate if necessary. It was therefore agreed that it should not be called up. In the open session of the committee it was apparent that Senator Wolcott was opposed to this legislation, as was Senator Hiscock, and Senator Gorman was not favorable.

The question is one which was mentioned in both party platforms, but honestly, the attention which it has received from the public, is very largely due to the President's earnest and humane interest in the subject.

I fully believe that by means of circulars, etc., every railroad employee in the United States understands and appreciates the President's active and generous efforts looking to his welfare, and it has been my pleasure, as far as lay in my power, to see that this was made known.

I am, with great regard and respect,

EDWARD A. MOSELEY.

P.S. It is perhaps proper for me to state — in order to reply fully to your inquiry — that the reports in both

the Senate and the House, as well as the article in the fifth annual report of the Commission, were compiled by me.

When the final test came, the opposition contrived to capture more votes than Mr. Moseley had conceded to them. They were not enough, however, either to defeat the bill or block its progress. It was put on its passage in the last days of an expiring Congress and administration, while from a gallery Mr. Moseley watched and directed the fight, and it won in a garrison finish. In the House debate on February 21, 1893, an eloquent young Nebraska member from whom the country was to hear in a wider forum, William Jennings Bryan, expressed the determination of the friends of the bill in these words:—

I for one am willing to stay here till this session ends, because I think this bill should be passed. I believe it is dictated by humanity, and I am not willing, if I can prevent it, that these men shall be killed and maimed just because some of the railroads insist that they cannot afford to put these couplers on their cars. The only objection that I have heard made, the only real one in that letter of Mr. Haines found on our desks this morning, is that it would cost \$75 a car, or \$75,000,000.

Mr. Moseley made this interesting memorandum of the enactment of the law:—

The bill passed the Senate with ten votes against it by the greatest opposition. Of the ten votes against it, eight were given by Democrats and two by Republicans; one of the Republicans being Senator Stewart of Nevada and the other Senator Sawyer of Wisconsin. It then went to the House and passed with eighty-four votes against it, seventy-eight of which were cast by Democrats and six

by Republicans. The perfidy of certain people may be well known when the very persons who took part in the adoption of the platform were most active on return to Congress in their attempt to prevent this legislation.

It has always been charged that the railroad interests had made their peace with Tammany and that as a contribution to the campaign had been made, this legislation should not be enacted. This is well shown when it is understood that every representative from Tammany voted against the enactment of this humane law, with one exception. There are persons who saw a telegram, which probably could be produced if necessary, from Richard Croker to Amos Cummings, about in the following words:—

“We are against the car coupler bill. Throw it down and tell our people to do the same.

“RICHARD CROKER.”

Full well they obeyed the command of their master, except Cummings, who said he would see Richard Croker in hell ten thousand times before he would fail to cast his vote for so meritorious and humane a bill.

Mr. Moseley followed the bill from the Capitol to the White House, as he himself related in a letter written sixteen years afterward to President Harrison's Attorney-General:—

INTERSTATE COMMERCE COMMISSION, WASHINGTON.
June 16, 1909.

Office of the Secretary,
EDWARD A. MOSELEY.

HON. WILLIAM H. H. MILLER, INDIANAPOLIS, INDIANA.

DEAR GENERAL:

My good friend, Mr. Michener, dropped in this morning, and our conversation led to the old days and the great work which was done by President Harrison in forcing the passage of what is known as the “Car Coupler Law.” I shall never forget the great impression that you

made upon the writer at the time, when I was told at the White House that I had better see you, as the railroads had made a final protest, and that the President had referred the bill to you for the purpose of advising him as to whether or not he should sign it.

I went to your office; there had been a large delegation of railway attorneys and others to see you to urge you to advise the President to adopt their view, and I shall never forget what you said to me, — "Moseley, I don't like your bill." My heart was in my mouth when, with a great deal of force, you brought your fist down on the table and said, "because, it is not half strong enough." I have been your ardent admirer ever since.

But the bill with all its faults, which you were so ready to perceive, has done a wonderful work, and at the suggestion of Mr. Michener I take pleasure in sending you a copy of defendant's brief in the case of International and Great Northern Railroad Company *v.* United States of America, No. 1776. By glancing over this brief you will see the great benefit that this bill has been as an instrument of saving life and limb.

I am, with great regard and respect,
EDWARD A. MOSELEY.

Another letter completes the record of the enactment:—

EXECUTIVE MANSION, WASHINGTON.
February 27, 1893.

EDWARD A. MOSELEY, Esq.,
Interstate Commerce Commission.

MY DEAR MR. MOSELEY:

I have your letter of the 18th instant. You certainly have earned the pen, and when the President approves the bill, I will see that it is reserved for you.

Congratulating you upon the passage of this most righteous measure, and wishing you all good things,

Very truly yours,
E. W. HALFORD,
Private Secretary.

Had the author of this legislation been in the Senate or House, his name would have been attached to it and it would be known to the world as the "Moseley Law." By reason of his position, however, Mr. Moseley necessarily had done his work in the name of the Commission; but those who could know what part he had taken in framing and passing the act awarded him full credit, as the following testimonials bear witness:—

BROTHERHOOD OF LOCOMOTIVE FIREMEN,

In the Fourth Biennial Congress assembled, express their appreciation and gratitude for services rendered by Edward A. Moseley, Secretary of the Interstate Commerce Commission, through whose faithful and earnest efforts before the Committee on Interstate Commerce, the "Coupler Bill" was passed by Congress and became a law, during the administration of President Harrison, March 2d, eighteen hundred and ninety-three.

The "Coupler Bill" required the placing of automatic couplers upon all freight cars and the equipment of locomotives with safety air brakes, making the lives of railway employees as safe as possible by the ingenuity of man.

ORDER OF RAILWAY CONDUCTORS OF AMERICA

At the twenty-fourth Grand Division of the Order of Railway Conductors, held at Toledo, Ohio, May 17, 1893, the following resolution was adopted:—

Whereas, The conductors running trains and in other service on the railroads are directly interested in the question of a standard form of coupler for use on freight and passenger cars, and whereas the late law of Congress calls for uniformity on freight cars, therefore be it

Resolved, That the thanks of the O. R. C. are hereby tendered to the worthy Secretary of the Interstate Commerce Commission, Edward A. Moseley, for his efforts in securing safety appliance legislation for railroad employees.

E. E. CLARK, Grand Chief Conductor.

WM. P. DANIELS, Grand Secretary and Treasurer.

BROTHERHOOD OF RAILROAD TRAINMEN

TO EDWARD A. MOSELEY

In grateful recognition of his valuable assistance and unselfish interest, which contributed in no small measure toward the enactment of the Automatic Coupler and Power Brake Law, giving to the railway employees of the United States greater security to life and limb in their hazardous vocation, the Brotherhood of Railroad Trainmen at its second biennial convention, held at Galesburg, Illinois, May 20 to June 5, inclusive, eighteen hundred and ninety-five, makes sincere acknowledgment of the sterling friendship of Honorable Edward A. Moseley.

Railway trainmen, men who face danger and death in a struggle to win their daily bread, know and appreciate a true friend. Formal words of thanks are small compensation for such substantial evidences of good will, but we wish to give expression to our hope that Mr. Moseley's remaining years may be many and filled with the brightest and best of the earth.

P. H. MORRISSEY, Grand Master.

Attest:

W. A. SHEAHAN, Secretary.

SWITCHMEN'S MUTUAL AID ASSOCIATION OF NORTH
AMERICA

At the eighth National Convention of the Switchmen's Mutual Association, held at Evansville, Indiana, May 14th, 1894, it was

Resolved, That it is the sense of this convention to extend our sincere thanks to the Honorable Edward A. Moseley, for his kindly interest in furthering the adoption of the many safety appliances now in use on railroads.

J. E. WILSON, Grand Master.

JOHN DOWNEY, First Vice-Grand Master.

MILES W. BARRETT, Second Vice-Grand Master.

J. M. MURPHY, Grand Secretary and Treasurer.

The Railroad Yard Masters' Association, at their fourth annual convention, also passed resolutions tender-

ing a vote of thanks for the services which Mr. Moseley rendered in the passage of the bill.

AT THE REGULAR MEETING

BIENNIAL CONVENTION BROTHERHOOD LOCOMOTIVE ENGINEERS

Held in St. Paul, Minnesota, May 9, 1894, the following preamble and resolutions were adopted, to wit:

Whereas, The Honorable Edward A. Moseley, Secretary of the Interstate Commerce Commission has, at all times and under all circumstances, by his untiring efforts and his ready and willing assistance, manifested his interest in labor organizations and their representatives and in this body especially, therefore be it

Resolved, That this Grand International Body in convention assembled, fully realizing the importance of the service rendered by Mr. Moseley and the readiness with which he has responded to any request made upon him so far as it was consistent with his duty as an officer of the government, take this opportunity to testify our high appreciation of not only the service rendered, but the spirit that prompted it.

That the individual and united thanks of this Grand Body be tendered Mr. Moseley, and that we hereby pledge ourselves to make use of any opportunity that may present itself to prove our appreciation by acts as well as by words.

Resolved, That a copy of these resolutions, suitably engrossed and signed by our grand officers, be forwarded to Mr. Moseley for his acceptance.

P. M. ARTHUR, Grand Chief	T. S. INGRAHM, First Grand Engineer.
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A. B. YOUNGSON, Asst. Grand Chief Engineer.	C. H. SALMONS, Second Grand Engineer.
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DELOSS EVERETT, Third Grand Engineer.

Those resolutions, engrossed and framed, were the cherished adornments of the walls of the Secretary's

office as long as Mr. Moseley lived. The *Locomotive Firemen's Magazine* made this record of his services:—

The law passed by the late Congress relating to safety appliances on railroad trains marks an epoch in legislation of great significance. It demonstrates that the law-making power of the country does take some interest in human life. If corporations are without souls, as is generally believed, it does not follow, fortunately, that Congress is equally destitute in that regard, and can not be aroused to a sense of obligation to do right. It requires time and patience, however, to educate the average Congress. It is a great body and moves slowly. To convince it, and then instill into it the required courage to act, is a herculean task.

Only the few are able to comprehend the conflicting influences brought to bear upon Congress when any important measure demands action, and especially is this true when the measure, in any sense, antagonizes the greed of corporations. In such cases capital and brains are in alliance, and if the measure provides protection for workingmen, the tremendous disparity of influences is seen at once. To enact a law "to promote the safety of employees upon railroads" brought out the full force of corporation opposition, and, to succeed, labor was challenged to put forth every power at its command, and in the trial it found in the person of Mr. Edward A. Moseley a champion whose steadfast fidelity is worthy of the highest commendation.

We have on our table documentary evidence of Mr. Moseley's untiring labors, as also the opposition that had to be overcome to secure the passage of the important measure, all indicating his comprehension of the situation and displaying, not only unflagging fidelity to the welfare of labor, but diplomatic skill of the first order in dealing with law makers. We are made acquainted with the vote of each member of Congress, and also his party affiliations for future reference, in all of which we see Mr. Moseley's splendid management. It affords the magazine unstinted satisfaction to give Mr. Moseley the fullest

possible recognition for his labors and sacrifices, and to pledge him that his work will not be forgotten.

At the national convention of state railroad commissioners, the committee on safety appliances spread on the minutes this acknowledgment:—

We desire in this report to make special mention of the services rendered by Mr. Edward A. Moseley, Secretary of the Interstate Commerce Commission. We can state with a degree of positiveness that he gave himself no rest until assured of success in the passage of the Safety Appliance Bill. Kind and courteous in his manner, ever ready to lend an assisting hand to all in their efforts to have a just and humane law passed that would give to the railroad employees more security to life and limb, he will ever be remembered as an earnest advocate of measures that were of great interest and benefit to railroad employees, and to him we can truthfully say we owe, in a greater measure than to any other, the success of the bill that has become a law.

No congratulatory message was more prompt, and we may be sure that none gave its recipient more pleasure, than this letter from his mother, written on the day that President Harrison signed the act, and in the last year of her life:—

NEWBURYPORT, March 22, 1893.

MY DARLING BOY:

I must write to congratulate you upon your great achievement. From your first efforts in the cause, I have taken the greatest interest in its success. Ah, my dear one, you are the philanthropist among my sons. How proud I am of you. You make your mother's heart rejoice. Now, your name will be blessed all over the land.

The articles you have written and sent me on the sub-

ject, I have read most diligently, and I thank you for them; they are so to the point.

My eyes trouble me so much that I can write no more. May the blessings of heaven rest upon you, is the earnest prayer of your fond mother,

CHARLOTTE A. MOSELEY.

The father added this postscript :—

DEAR EDWARD :

I will not attempt to gild refined gold, by adding any words to your mother's note.

She evidently felt great interest in writing you, writing in her chamber this morning almost immediately on rising.

I cannot express my sentiments on the subject better than by attempting to pass hers as my own also.

Affectionately,
FATHER.

Among many words of praise in the press, Mr. Moseley's home paper, the *Newburyport News*, on March 11, 1893, made a pertinent suggestion :—

Massachusetts has become one of the foremost states in appeal for a congressional insistence upon a uniform car coupler bill. Each year has witnessed the passage of a resolution by the Bay State Legislature setting forth the advantages of this measure, but until 1893 the efforts of our people have met with disappointment. Now, thanks in a great measure to a Massachusetts man, the car coupler bill has become a law, and the railroad men and humanitarians are happy.

It would be eminently fitting for the Massachusetts Legislature to recognize the efforts in this connection of Secretary Edward A. Moseley of the Interstate Commerce Commission. By his zeal he has made possible that which Massachusetts has sought for years, and due recognition of the fact might well be taken. Mr. Moseley is a Newburyport citizen, and our city has four people

COMMONWEALTH OF MASSACHUSETTS.

In the year One Thousand Eight Hundred and Ninety three.

Resolutions

Considering the Thanks of the Commonwealth
to

Edward A. Mosley.

Resolved, That the Senate and House of Representatives in General Court assembled, appreciating the valuable services rendered the cause of humanity by Edward A. Mosley of Newburyport by his untiring and efficient efforts to secure greater safety to railroad employees, hereby tender the thanks of the Commonwealth to him for his sincere and disinterested labors to secure the passage of the law requiring railroads engaged in interstate commerce to equip their freight cars with automatic couplers.

Resolved, That a copy of these Resolutions suitably engrossed and signed by the president and clerk of the Senate and the speaker and the clerk of the House of Representatives be forwarded to Mr. Mosley.

Adopted *Alfred S. Parker* Senate April 4 1893. President.
Henry D. Cotton Clerk.

Adopted *William C. Sumner* House of Representatives April 10, 1893. Speaker.
Edward A. May Clerk.

Witness the seal of the
Commonwealth.

Wm M. Oliver
Secretary.



at the State House who are friends of Mr. Moseley. Let any one of them place this subject before the Legislature and we predict that it will meet with favor at the hands of the members of both branches, many of whom know Mr. Moseley personally and all of whom are acquainted with him by favorable reputation.

The Legislature of Massachusetts being in session, the chairman of the house committee on railroads, Mr. George von L. Meyer, afterward ambassador and cabinet minister, reported a resolve which passed both branches, bestowing on Mr. Moseley the high and rare honor of the thanks of the Commonwealth. That parchment, bearing the seal of his native state, remained always his proudest possession. It was to him a patent of nobility.

COMMONWEALTH OF MASSACHUSETTS
IN THE YEAR ONE THOUSAND, EIGHT HUNDRED AND
NINETY-THREE

RESOLUTIONS
TENDERING THE THANKS OF THE COMMONWEALTH
TO
EDWARD A. MOSELEY

Resolved, that the Senate and House of Representatives, in General Court assembled, appreciating the valuable services rendered the cause of humanity by Edward A. Moseley of Newburyport by his untiring and efficient efforts to secure greater safety to railroad employees, hereby tender the thanks of the Commonwealth to him for his sincere and disinterested labors to secure the passage of the law requiring railroads engaged in interstate commerce to equip their freight cars with automatic couplers.

Resolved, That a copy of these resolutions, suitably engrossed and signed by the President and Clerk of the

Senate, and the Speaker and the Clerk of the House of Representatives, be forwarded to Mr. Moseley.

Senate, April 4, 1893.

Adopted. ALFRED S. PINKERTON, President.
HENRY D. COOLIDGE, Clerk.

House of Representatives, April 10, 1893.

Adopted. WILLIAM E. BARRETT, Speaker.
EDWARD A. McLAUGHLIN, Clerk.

Witness the Seal of the Commonwealth.

WILLIAM M. OLIN, Secretary.

CHAPTER XI

THE BRAKEMAN WHO LOST A HAND

THE battle for the Safety Appliance Act was not yet won; it really had only begun. For the act had yet to be enforced and to run the gantlet of the courts.

Mr. Moseley began at once to prepare himself for the task of enforcing the law all along the lines of the thousand railroads to which it applied. It was so generally regarded as his law that the Interstate Commerce Commission left its enforcement to him through all the remaining years of his service. To meet that duty, he was drawn into a close study of railroading.

He had already made himself the leading authority in Washington on the practical operation of the railroads, and in the further course of his duties he gained a remarkably intimate knowledge of the business of railroad transportation and the lives of those engaged in handling that vast traffic. His mind was filled with pictures of the men in the cab and the caboose, at the brake and the switch, and their labors and perils grew to be as real to his vision as if he himself had borne them.

The Safety Appliance Act being an entirely new departure in Federal legislation, it was certain to be stubbornly contested line by line. To meet that contest, Mr. Moseley plunged into a study of the history of consti-

tutional law and judicial rulings affecting the intricate relations of the nation to the states.

The novelty of the new act placed it at a disadvantage in court. The law is a most conservative profession. Judges generally, by reason of their age and station, are slow to recognize new conditions and the new principles of legislation which a younger generation has devised to meet them. Moreover, it was the special misfortune of this law that many judges, particularly in the West, had been railroad attorneys before their appointment to the bench, and the exclusively railroad point of view often remained their habit of mind. A few of them, indeed, seemed not to be conscious that their position on the bench should work a change in their relations with railroads.

In an article in *Transportation* for September, 1893, Mr. Moseley brought up the case of a Federal judge, who was said to have accepted free passage over a line which was applying for an injunction against its striking workmen, and who sat in a private office of the company when he issued the writ without the knowledge of the men. Mr. Moseley raised the question whether, if such conduct were permissible in a judge, it was fair to dismiss and disgrace a juror for dining with a party to a suit.

In one of his pamphlets, which he circulated widely, he quoted Mr. Milton H. Smith, president of the Louisville and Nashville, as having testified before the Interstate Commerce Commission when asked as to what extent his road gave passes to judges: "I think I will have to refer you to our attorney. I think Mr. Baxter

has been of the opinion, and I fear most of our attorneys have been of the same opinion, that it is well not to appear before a judge unless he has a pass if he wants one."

Mr. Moseley was already a member of the bar of the Supreme Court of the United States when the Safety Appliance Law was passed. President Cleveland had advised him, shortly after coming to Washington, to study law, and it was under the able direction of Judge Cooley that he prepared for his successful examination. He was duly enrolled as a member of the bar in 1889, before most of those about him knew that he had thought of such a thing. A letter to the Chairman of the Safety Appliance Committee of the Railroad Commissioners shows his interest in law when his duties under the Safety Appliance Act were only beginning:—

INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY, WASHINGTON.
March 18, 1893.

HON. GEORGE G. CROCKER,
19 Milk Street, Boston, Mass.

MY DEAR MR. CROCKER:

When I first, at the suggestion of Mr. Cleveland, determined to acquire some familiarity with the jurisprudence of our country, I took the advice of that eminent sage of the law, Judge Thomas M. Cooley. His suggestion was that I should commence my studies by a most careful reading of Cooley's Edition of Blackstone's Commentaries.

By reference to page sixty of volume one, third edition, of that great work you will find a cardinal rule laid down for the construction of all laws, which made a very profound impression upon me. It is that "As to the effects and consequences, the rule is that where words bear none or a very absurd signification, if literally understood, we must a little deviate from the received sense of them,"

and the great commentator follows the general principle thus laid with a most apposite illustration, as follows: "Therefore, the Bolognian law mentioned by Puffendorf, which enacted that whoever drew blood in the streets should be punished with the utmost severity, was held, after long debate, not to extend to the surgeon who opened the vein of a person that fell down in the street with a fit."

I agree with you that the second section of the act may, not must, bear literally the interpretation which you place upon it, and I have read with interest your last favor, the theory of which I think would have consigned to condign punishment the surgeon who bled a fainting person in the street. Jestings aside, I can only refer you again to the principle which I suggested in my last to you, that this law must be construed, as all legislation must be, with reference to the evil sought to be remedied by its enactment. This rule of construction I think would certainly sustain my view, but aside from this it strikes me that much the most reasonable, literal interpretation of the law is what I contend for.

Your interpretation, as I most respectfully but very confidently suggest, not only violates the principle which makes legislative intent the cardinal rule of interpretation, but appears to me to be a strained construction of the very wording of the act. However, as I said before, I should greatly prefer the act as originally drafted by you, was pledged to it, and did all in my power to secure its enactment.

I am convinced that the sound, literal interpretation, as well as the intent of section two, is that while any road may adopt any coupler it pleases, it must do so with this limitation, that any coupler so adopted must not only act automatically with all other couplers used, owned or controlled by that particular company, but it must couple automatically with the coupler of any car belonging to any other company or person, which the first company may undertake to haul upon its line.

However, dear Mr. Crocker, I feel that I can well continue to sit at the feet of Gamaliel. With my great regard and respect for you and your opinion, it may seem pre-

sumption to entertain views antagonistic to your own upon a question of statutory interpretation; but as our old friend Butler in *Hudibras* says, "He that complies against his will is of his own opinion still."

But the crucial test is soon to come. Mr. Safford and the advocates of the link-and-pin type are arrayed in a final struggle with those who advocate the principle of the vertical plane in couplers. I thank God that I will not have the slightest pecuniary interest in this fight, and truly I do not care which wins. I can express my position in one simple sentence: That the principle of coupling without personal intervention shall be universal. I am,

With great regard,

Most sincerely yours,

EDWARD A. MOSELEY.

Although in earlier days the least bookish of men, Mr. Moseley brought to bear on his study of the legal aspects of his work an unusual power of concentration and an original and ingenious mind. He took his books to bed with him and read them until nature asserted herself and he fell asleep. He discussed the subject with every lawyer he met, and surprised well-trained members of the bar by the originality of his deductions. Working largely in a new field, he was driven to take advanced ground on the question of Federal authority.

By the provisions of the new law, every locomotive engaged in interstate commerce must be equipped with a power driving-wheel brake and appliances for operating the air-brake system, and every train must contain a sufficient number of cars with air brakes to enable it to be controlled by the engineer without the necessity of a brakeman setting the old hand brakes. It was further required that all cars employed in interstate commerce

should have automatic couplers which would couple by mere impact and so devised that they could be coupled and uncoupled without the necessity of a man going between them.

To give the railroad companies sufficient time in which to equip their cars with safety appliances, the law did not become fully effective until August 1, 1900. Only five days afterward, a brakeman named W. O. Johnson lost a hand while coupling a dining car to a locomotive at Promontory, a little station on the Southern Pacific Railroad in the state of Utah. While both the locomotive and the dining car were equipped with automatic couplers, they were so different in type that they could not be coupled by impact, and Johnson was ordered to go between them to make the coupling. His hand was caught and crushed so badly that it had to be amputated above the wrist.

The maiming of that brakeman on that far-away siding in Utah put the new law to the test. The judge of the trial court, on motion of the attorney for the railroad, directed the jury to find in favor of the company, whereupon the brakeman's case was appealed to the Circuit Court of Appeals. When that court had finished with the case, it was found that the Safety Appliance Act was more sadly maimed than poor Johnson himself. It, too, had been caught between the bumpers and its life all but crushed out.

The decision, written by Judge Sanborn, was a most learned disquisition on many subjects, but with scant reference to the lost hand. The court held that although

the act required automatic couplers on cars, a locomotive was not a car; that although the dining car was being turned in order to be placed in an interstate train bound for San Francisco, it was not actually engaged in interstate commerce at the moment when the accident occurred; that since the couplers were automatic, they complied with the law, even if they were of such different patterns that they could not be automatically coupled.

That would probably have been the end of the Johnson case in the ordinary course of litigation. The wounded brakeman would hardly have found the money or the courage to carry his suit against his former employer to the Supreme Court of the United States, twenty-five hundred miles away. Two judges sitting with Judge Sanborn had concurred in the decision, which sustained the adverse decision of the court below. Four judges against one crippled brakeman!

At that point, however, Mr. Moseley, who had been anxiously watching the case, took it up, determined to defend at once the rights of the brakeman and the life of the law. If the act could not secure automatic couplers and protect men from going between cars, he saw that it would be worthless and all his years of hard work wasted. He went to the President and the attorney-general, and through the influence of the government a writ of certiorari was granted by the Supreme Court. By this means the case was brought before the highest court in the land.

That was but the opening of the fight. Unless the case were presented to the Supreme Court in accordance

with Mr. Moseley's own carefully designed plan, the result might and probably would be the same as in the Circuit Court of Appeals, a victory for the railroad and a defeat for the injured man. In the latter court the opinion favorable to the railroad was written by a most intellectual judge, well trained in all the niceties of legal precision. It bore every mark of a strong legal mind, and to most lawyers it would seem to be conclusive.

The opinion would have been conclusive had it been answered only with legal platitudes. Mr. Moseley saw that clearly. He knew that it was necessary to get before the Supreme Court the stern realities of the railroad man's dangerous calling, in order to show the situation with which Congress was dealing when it adopted the law. To be able to do that, he boldly adopted a course unknown to our system of jurisprudence. He urged Mr. Knox, then the attorney-general, to intervene and file a brief on behalf of the government. Such a thing never had been done in the long existence of the department of justice.

The case was mere private litigation: *Johnson v. Southern Pacific Railway*. How could the government become a party to it? Why should the government throw its great weight in the scales of justice in a private case? Simply to save the law from being done to death.

Mr. Moseley asked that the department request permission to file a brief, in order to bring to the notice of the court what the government deemed to be a proper interpretation of the statute and in order that its

integrity might be preserved. He appreciated the fact that it was better to have the law adjudicated for the first time in a case where harm had been done to an individual, rather than in some government prosecution for a penalty. An application of the law to a violation which had not caused an injury to any one would perhaps impress the judges as technical and result in the court approaching the subject in a technical rather than in a broad and humane spirit favorable to the remedial features of the law. The government consented to intervene, and a new precedent was made.

No one but a man of Mr. Moseley's large heart and superb vigor could have succeeded in arousing the interest of the chief law officers of the United States in a poor brakeman's suit for damages against a powerful railroad. There was no impropriety in the action, for the law, by its terms, required a governmental body, the Interstate Commerce Commission, to enforce its provisions. Therefore, as Mr. Moseley argued, it was proper for law officers of the government to appear in a proceeding in which that law was to be interpreted by the highest court.

For weeks and months before the matter was presented in court, Mr. Moseley was in constant consultation with railroad men and with the lawyers who were to represent the brakeman. He consulted with President Roosevelt and Attorney-General Moody, who had succeeded Mr. Knox, and he enlisted the great assistance of Mr. Moody and Solicitor-General Hoyt. The latter officials, the highest law officers of the government, filed

a strong and able brief for an interpretation of the law favorable to its vitality.

To cause the government to intervene in a case between private parties, was not the only innovation which Mr. Moseley brought about in his contest for the life of the law. He determined to reach the heart of the court by a vivid representation of the danger of coupling cars with link and pin. A lawyer of the regular school, who realized that the case was to be tried on the printed record, would have felt obliged to confine himself to it, for fear of a rebuke if he attempted to call to the attention of the court anything not in the record. But Mr. Moseley was not daunted, and he insisted that the rule confining comment and argument to the record was not violated by illustrating to the court what the record really meant.

At much expense, he had large photographs and cuts made showing men in the act of coupling cars with couplers like those which had maimed Johnson. Thus he interpreted the record to the court pictorially, so that the justices had before them not only the words of the record, but the real and vital facts in the case. He went further, and at considerable trouble had a model made of cars with automatic coupling devices attached. When this was brought into the chamber of the Supreme Court, the attention of the justices was called for the first time to a demonstration of the safety and efficiency of the automatic method of coupling, without the necessity of a man going between the cars and endangering his life.

In short, the court was interested in the human and mechanical problem which was before it. All this required careful preparation and planning for weeks and months. Care was taken to place before the court all statistics that had a bearing on the matter. The statistics of the deaths and injuries from coupling cars were startling. They were accurately compiled, were used fairly to strengthen the case, and their application was made clear to the aspect of the controversy then before the court. Every phase of the legislative history of the act, the interpretation of which was then to be judicially made, was placed before the justices, and particular attention was directed to the remarkable declaration of President Harrison, in one of his messages urging the safety appliance legislation, to the effect that the perils of our railroad employees constituted a reproach to our civilization.

The Supreme Court gave the victory to the brakeman and the law. Chief Justice Fuller delivered the opinion, in which he employed the quotation from President Harrison that Mr. Moseley had laid before the court, and he commended the diligence of counsel in presenting the history of the legislation; the decision of the Circuit Court of Appeals was reversed, and the case was remanded for a new trial.

The final document in the record of the matter is pathetic, so typical of the law's delay. When nearly eight years had passed since Johnson lost his hand, the following telegrams were exchanged:—

OGDEN, UTAH, April 16, 1908.

HON. E. A. MOSELEY,
Secretary Interstate Commerce,
Washington, D.C.

What is your advice as to accepting three thousand,
Johnson case, considering poverty and heavy expense;
answer.

W. L. MAGINNIS.

WASHINGTON, April 17, 1908.

W. L. MAGINNIS,
Eccles Building,
Ogden, Utah.

Our advice is for you to accept it.

EDWARD A. MOSELEY.

CHAPTER XII

BATTLING FOR CRIPPLES AND WIDOWS

HOWEVER Johnson may have fared, a decisive victory had been won in his name for all the tens of thousands of trainmen in the country. The court of last resort had said that thenceforth they should not be required to go between cars for the purpose of coupling them and risk life and limb, as he had been ordered to do.

The Johnson case took an important place in the literature of statute law and has been cited in nearly all the decisions that have followed in cases arising under the Safety Appliance Act. Mr. Moseley gave Chief Justice Fuller's opinion the widest publicity within his power, distributing thousands of printed copies among judges, lawyers, labor unions, and railway managers.

He collected and forwarded to a railway journal, for the purposes of an illustrated article on the celebrated case, portraits of the members of the court, President Roosevelt, the attorney-general, and solicitor-general and of all the persons in any way connected — except his own. "So far as my own interest in the matter is concerned," he wrote to the editor in the spirit that ruled him throughout his long term of service, "I have the satisfaction of knowing that we won out, and am content to rest in the consciousness of good deeds well done."

Largely by his bold ingenuity, energy, and persistence, a new precedent had been established, and the success attending the experiment was an object lesson to all the departments. A new and powerful weapon of defense had been developed, and Mr. Moseley announced to all concerned that "the government is determined that no law shall receive its death blow by judicial construction unless the matter has first been fairly presented to the Supreme Court of the United States."

He watched the courts all over the Union like a hawk, and wherever he found a railway worker suing to recover for injuries inflicted through the failure of a railroad to provide safety appliances, he went to the defense of the law. The government would intervene, as in the Johnson case, in an effort to see that no violator of the act should escape the consequences when the violation had caused the death or injury of an employee.

Nor did Mr. Moseley confine his watchfulness to the Federal courts alone. To the astonishment of judges and of lawyers engaged in this branch of law, attorneys of the national government intervened even in cases brought before state courts to save the act from virtual nullification. In Kansas, a trainman, Brinkmeier, was injured while coupling cars in 1900, the year that the law went fully into force, and the jury gave him a verdict for \$6500 against the Missouri Pacific Railroad.

The counsel for the company did not take the course pursued by the Southern Pacific in the Johnson case, but adopted new tactics. They asked the judge to instruct the jury that Brinkmeier must prove that the

company had failed to use "reasonable care" to comply with the Safety Appliance Act. The judge having refused so to instruct, the point was carried to the Supreme Court of Kansas, and that court set aside the verdict and ordered a new trial, in which the injured man was commanded to prove that the railroad did not use reasonable care to provide safety appliances.

Mr. Moseley learned of that decision from a newspaper clipping, and saw at once that the law was again in jeopardy. He hastened to secure the intervention of the United States in the case, the first time the nation ever intervened in private litigation in a state court to uphold the integrity of a national law. By the construction placed on it in the Kansas court, the requirements of the act were not absolute, and in order to convict a railroad of a violation it would be necessary to prove that it had failed to use reasonable care to comply with the statute.

The United States asked leave to have the point re-argued. The court gave leave, but after hearing the argument of the representative of the Federal government, whom Mr. Moseley sent to Kansas for the purpose, it affirmed its former judgment, and sent Brinkmeier back to undergo the cost and delay of a new trial, with the added burden of having to show it was owing to the conscious neglect of the company that he was injured, an almost impossible task.

Again the case came before the Supreme Court of Kansas on appeal. In the meantime, the ground had been taken from under the court and the interpretation for which Mr. Moseley contended had become thoroughly

established, and it is now recognized by all the courts that compliance with the Safety Appliance Act is an absolute, mandatory obligation. The point was finally settled by a decision Mr. Moseley took special pleasure in reporting in the following letter, which illustrates his close attention to court proceedings.

May 18, 1908.

DEAR MR. LOEB:

Justice Moody in the Supreme Court to-day delivered a most important opinion, the effects of which will be very far reaching. It holds that where there is a statute providing for safety appliances, reasonable care and due diligence in keeping them in repair are not sufficient — that the obligation of this law is absolute.

I have prepared a little memorandum in regard to this decision which I inclose, and I am desirous of having the President see it, for Justice Moody has certainly performed a great service to the public and one which is in line with the various recommendations and efforts of the President in the matter of making the distribution of the economic disadvantages incident to great corporations more just. It will be a great cause of regret if the public fail to notice this advanced step of the court.

I write this in the greatest haste.

With regard and respect,

EDWARD A. MOSELEY.

HON. WILLIAM LOEB, JR.,
Secretary to the President.

Brinkmeier, however, never recovered damages. When the Kansas Supreme Court found itself overwhelmed by the current of judicial authority against the position it had taken, it was able to pick flaws in his counsel's petition, and on this technical point it was sustained by the Supreme Court of the United States after Mr. Moseley's death — eleven years and five months after the injury!

While Mr. Moseley was battling on one hand to sustain the law in the courts, he constantly carried on a campaign in Congress for amendments and new statutes, designed to meet every question or doubt raised by railroad attorneys and ultraconservative judges. Thus the weak spots in the legislation, which it was his duty to enforce, were steadily strengthened.

Congress not only abolished the old common law defense of the carelessness of a fellow-servant in cases arising from injuries sustained in interstate commerce, but it also took away the plea of assumption of risk by the injured employee where it could be shown that the injury was caused through the failure of the railroad to provide the safety appliances prescribed by law. Congress also put a stop to word juggling by specifically declaring that the Safety Appliance Act relates to "locomotives, tenders, cars, and similar vehicles." To the quibbling as to whether an empty car on a siding is really embraced in the provisions of the act, Congress made it plain that everything on wheels, which is used on any railroad engaged in interstate commerce, is included. Mr. Moseley's active participation in that legislative work is disclosed by two letters which he received after the passage of a most important amendatory act in 1903, one from a member of the Senate and the other from a member of the House committee on interstate and foreign commerce:—

WASHINGTON, D.C.,
March 27, 1903.

HON. EDWARD A. MOSELEY, Secretary,
Interstate Commerce Commission, Washington, D.C.

DEAR SIR:

I have been intending to say ever since the passage of the act to promote the safety of employees and travelers on railroads etc., at the recent session of Congress, that I feel much indebted to you for your earnest and helpful support. I refer not only to your general support of the general proposition, but the help you rendered in perfecting the measure. The amendments that were adopted upon your suggestions, especially those adopted while the bill was in conference, did much to make the measure more satisfactory and effective than it otherwise would have been. All who were interested in this legislation should indeed feel very grateful to you for your efficient friendship in the matter.

Very truly yours,
J. B. FORAKER.

WASHINGTON, D.C.,
March 5, 1903.

HON. EDWARD A. MOSELEY, Secretary,
Interstate Commerce Commission.

MY DEAR SIR:

The act to amend an act entitled "An act to promote the safety of employees and travelers upon railways, by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," being now a law, it is to be hoped that such an improvement in railway appliances and the use thereof will follow that injuries to trainmen will be much less frequent, and will steadily diminish in number and severity.

It is only just that due acknowledgment should be made to you for the important services you have rendered, and without which this amendment would probably have failed of passage at the recent session of Congress. When

counsels were distracted and the measure apparently dead, your intercession led to such a bringing together of potential forces that consideration and action were had. And in the incomplete form in which the measure had passed both Houses, with respect to its provision relating to automatic couplers, it was solely responsive to your suggestions and representations that further amendment was recommended by both Houses of Congress.

Doubtless a grateful appreciation by those interested directly will be manifested, and I trust you will never weary in earnest labor in the cause of humanity, which you have thus far served so well.

Yours very sincerely,
IRVING P. WANGER.

Mr. Moseley's able and vigorous championship of the various laws with which he had to do, attracted the favorable attention of judges and lawyers throughout the country, and a confidential correspondence sprang up between him and them. As an example of the confidence reposed in him by distinguished correspondents, the following remarkably frank letter from an eminent Federal judge will serve:—

MY DEAR MR. MOSELEY:

Accept my sincere thanks for copies of the brief for the plaintiff in error in the Johnson case. I was favored with a copy of the opinion of the Circuit Court of Appeals in the case soon after it was filed, and was on the point of writing a review of it, when I learned the case had been taken to the Supreme Court.

The writer of the opinion in the Court of Appeals has an acute and ready, but an extremely narrow mind—as narrow as the neck of a vinegar cruet. To him the little things of the law seem great and the great things little. He argues a question of the construction of a great remedial statute enacted to preserve human life as though it was a plea in abatement or a special demurrer under the

old system of special pleading. He delights in technicalities, subtleties, refinements and microscopic distinctions. If his construction of the statute is right, the last state of the employees and the public is worse than the first.

It is distressing to see such a judicial perversion of a beneficent statute.

Thanking you again for your courtesy, I am

Very truly,

Mr. Moseley's close observation of legal points is illustrated by this letter which he wrote to a Federal judge:—

November 19, 1906.

DEAR JUDGE:

Your opinion and order have been received, and permit me to say that I am much pleased with the views you have expressed, because I am sure every fact will be brought out at the trial. . . .

It seems but proper to call your attention to your statement that the locomotive in the Johnson case was a switch engine. That does not appear to be the fact. The locomotive was a freight engine running between Terrace and Ogden, two points in Utah, and was being used at the time of the accident in hauling an interstate freight train running between San Francisco, California, and Ogden, Utah. It had been cut off from its train at Promontory for the special purpose of doing the particular work in which Johnson was injured, and had gone down to hook on to the dining car. It was an engine which was not presumed to have gone out of the state, and was engaged temporarily in switching service because there is no switching engine at Promontory, as there is not work enough there for one. Every other statement made by you in regard to the case, I am confident is correct. . . .

I may also call your attention to the last paragraph on the next to the last page of your opinion, where it is stated that "lack of guilty knowledge will avail as a defense." Is this not a typewriter's error? Should it not read "not avail as a defense?" You will also find a typewriter's

error near the bottom of page 5, where your opinion is spoken of as a "petition" instead of an opinion.

With great regard and respect,
EDWARD A. MOSELEY.

An assistant counsel of a great railway system having said, while defending a prosecution in Chicago which had been brought against his company, that a certain other company had escaped prosecution through "graft," he pointed his cynical remark in Mr. Moseley's direction. Mr. Moseley, who kept on friendly terms throughout his fights with many of the leading railway attorneys, wrote to the general counsel of the road this characteristic rejoinder: —

I am writing you in a personal way to express my indignation and resentment at the statement made by your Mr. Blank. . . .

From one point of view it excites my risibility to think that I should be placed in the same category with grafters in a field of endeavor where the picking is so slim; but from a practical viewpoint, in consideration of my duty as a public official and of my past record, Mr. Blank's insinuation is nothing short of contemptible, and I must express my resentment in the most emphatic manner at my command. I will not stand such treatment, and I really believe that if Mr. Blank was within reaching distance I might be tempted to use something stronger than words in dealing with him. I am inclined to think that he may thank God that there is a reasonable amount of real estate between Washington and Chicago.

Of course, I am at the bottom of these prosecutions, but only as the official upon whom the enforcement of the law devolves, and I have the audacity to believe that when I place my hands to the plow, I shall strike a furrow before leaving it; when I accept a duty I shall carry it through to the letter. There has been no "persecution" of your company, as Mr. Blank seems to believe. All we want is to have the law observed.

In these cases which we brought to the attention of the court, there was none which could not have been avoided by the expenditure of a few cents for material and a few moments of time by a car repairer; whereas the man who was compelled to go between the cars by reason of the defective equipment might have been killed, thus entailing a loss of several thousand dollars upon the company. . . .

That the suits brought by us have been properly instituted is evidenced by the fact that we have never lost a case, and with the present temper of the Executive and of Congress, if any case is lost by fault of the law, or through any weakness or deficiency in the statute, I assure you that Congress will take speedy action to still further strengthen the law and emphasize its intent in enacting it.

With kind personal regards, I am,

Sincerely yours,

EDWARD A. MOSELEY.

For twenty-five years Mr. Moseley attended the reading of the opinions of the Supreme Court. He knew the opinions thoroughly and could instantly recall them for use in an emergency. He was better informed on questions involving the conflict between state and Federal authority than nine tenths of the practicing lawyers of the country. As a notable example of this he issued a pamphlet on Federal power, and when more than a year afterward Secretary Knox, one of the foremost constitutional lawyers, delivered an address on the same subject, it was astonishing to note the similarity of the lines of thought in which Mr. Moseley had anticipated that leader of the bar.

His many legal contests gave him an extraordinary acquaintance with the temper and tendencies of the members of the Federal courts all over the Union, and he

carried in his mind a classification of the judges in accordance with the mental bias their decisions had disclosed. Sometimes he maneuvered most skilfully to avoid putting a disputed point of law to the test in courts where he thought the tone was unprogressive. His deep interest in appointments to the bench is evidenced by the introductory part of a letter which he addressed to Mr. Taft in the opening year of the latter's Presidency :—

Before your election you were good enough to tell me that when you were President I might express to you my views concerning appointments to the federal bench. This is my justification for addressing you relative to the appointment of a suitable person to fill the vacancy on the Supreme Court bench occasioned by the death of Justice Peckham.

I wish it to be understood that I have no predilection in favor of any particular person for this important appointment, my only desire being to feel assured that whoever is appointed will not be reactionary in his views but may be depended upon at least to hold a sympathetic attitude towards the admirable sentiments expressed by you recently in your Chicago address.

One of the hardest and most interesting legal fights in which Mr. Moseley engaged was in the Schlemmer case. A steam shovel was in transit from a point in the state of New York to a point in the state of Pennsylvania, and was equipped with the 'old link-and-pin coupler, contrary to the Federal law. To couple it to a caboose at a station in Pennsylvania one night, Schlemmer was obliged to go between the two cars, stoop down, lamp in hand, and guide a long iron bar, weighing about eighty pounds, into the slot of the caboose coupler. Struggling in that cramped position under the burden of the heavy


bar, the poor fellow missed his aim as the cars came together, and his head was crushed.

His widow sued the railroad company, and the jury gave her a verdict of \$10,000, which the judge set aside on motion of the railroad counsel. The company contended that there was contributory negligence on the part of the dead man, and that the conductor who was standing by at the time had shouted to him to look out for his head. The widow appealed to the Supreme Court of Pennsylvania, and there again she lost, that court saying in its decision :—

“It is the settled law of Pennsylvania that any negligence of a party injured, which contributed to his injury, bars his recovery of damages without regard to the negligence either greater or less than his own, of the other party. The present is a clear case of contributory negligence within this rule.”

A member of the brotherhood to which Schlemmer had belonged brought the sad case to Mr. Moseley's attention. He instantly took up the widow's cause, and for five years it never was out of his thoughts. In a letter acknowledging the receipt of the court record of the case, he wrote on April 1, 1905 :—

It made my blood boil when I read it. We are working on it now and are having the help of some of the people in the Supreme Court in the preparation of our prayer for a writ of error. I am making a careful study of the case. I have concluded to go myself to Justice Brown in regard to the writ of error. I am a member of the court, and personally I am a warm friend of his, and I can perhaps talk with him better than any one else here.



Mr. Moseley made this a personal matter. He did not act as an official of the government, but out of sympathy with the widow and her fatherless children, one of whom he understood was blind. Running parallel with his sympathy was the indignation that had made "his blood boil" over the ruling handed down by the Supreme Court of Pennsylvania, "with its accustomed disregard of humanity," as he said.

He went to Justice Brown of the Supreme Court of the United States and obtained a writ of error, and then, on his own account, engaged counsel. A prominent railroad attorney consented out of friendship for him to make the closing argument, and Mr. Moseley selected a young man in his own office to present the case. He went into the preparation of the case with even more than his usual thoroughness, and often in discussing it with his associates, he knelt on the floor in the crouching posture that Schlemmer was compelled to assume between the cars, trying thereby to make clear the manner in which the unfortunate trainman came to his death.

When two years had passed since he entered upon the case, the matter was heard by the Supreme Court, and in another month Justice Holmes rendered a majority decision, which had been reached by a vote of 5 to 4, reversing the Pennsylvania court and ordering a new trial. At the second trial the widow again won a \$10,000 verdict, but again the judge set it aside; again she appealed to the Supreme Court of Pennsylvania; again that court non-suited her, and again Mr. Moseley aided to bring her case before the Supreme Court of the

United States. Her crowning misfortune was his illness at the time of this second hearing before the highest court, and when at last the final decision against her was rendered on May 15, 1911, her champion lay in his grave.

CHAPTER XIII

THE EMPLOYERS' LIABILITY ACT

WHILE Mr. Moseley was doing what he could in the movement to check the loss of life and limb among railroad workmen, he found that the money cost of all this human waste chiefly fell upon cripples and widows and orphans. A frightful yearly toll was not only collected from them in pain and tears, but in dollars and cents as well. The vast interstate traffic of the country, the richest commerce in the world, ground up men by the thousands, by the tens of thousands every year, and paid next to nothing for their arms and legs and lives. The larger part of this enormous financial burden was thrust upon physical wrecks and helpless women and children.

While a member of the Massachusetts Legislature, Mr. Moseley interested himself in the question of an Employers' Liability Act, and he supported a bill on that subject, which, as already stated, had been introduced by a fellow-member, Mr. Philip J. Doherty, whose recent able work on Federal Employers' Liability Law has taken high rank in contemporary legal literature. Mr. Moseley's experience in defending the Safety Appliance Act in the courts had deepened his conviction that the old common law dogmas, known as the fellow-servant and assumption of risk rules, did not rightfully apply to modern condi-

tions and were cruelly unjust to wage earners, particularly in the inevitably hazardous employment of railroad service. The terms in themselves have a distinctly anachronistic sound, echoes of an age when all employees were indeed servants, a class apart, and all employers were masters.

It chanced that when the first decade of the twentieth century closed, the great republic of the United States, the great democracy of America, was almost the only progressive nation that still clung to those harsh and unsocial doctrines, twin relics, they might be termed, of a medieval industrial system. In several states there had been an effort to mitigate their rigors, but in the Federal courts they continued to operate in their full severity.

Railroad workmen were among the chief victims of those judicial fetiches. Chief Justice Shaw of the Massachusetts Supreme Court having expanded the rule of fellow-servant to cover railroad employment in the infancy of the railroad, his decision was adopted throughout the courts of the country. A train conductor and a laborer engaged in graveling the track, a brakeman and a car inspector, an engineer on one train and the conductor on another train, an engineer and a yard clerk, a trainman and a telegraph operator were held to be fellow-servants, and a railroad company, therefore, was not liable for the injury of one caused by the negligence of the other.

If, moreover, an employee were injured through the negligence of his employer to provide safe conditions of

employment and the employee had knowledge of the defective equipment, the employer was not liable for damages; the employee was held to have assumed the risk. He was presumably at liberty to refuse to incur the danger of injury, although his refusal probably would have cost him his employment and might have exposed his family to want.

In many instances railroads did not trust to an implied contract, but required applicants for employment to sign sinister printed forms, in which they contracted to release the companies from all manner of responsibility. In one of those forms submitted to a committee of Congress, the employees were required to agree to assume the risk of every conceivable injury. All the ghastly perils were grimly set forth in fine type, and the poor seeker for work was compelled to sign away life and limb before receiving employment. An express company not only exacted a promise in writing that the employee would never sue for damages, but also a shocking pledge that if he should be killed and his widow or children or any other heir should bring suit, the company should collect from his estate the money it spent in defending itself against his heirs.

If an injured employee could not be prevented from recovering damages on the ground that his injury was due to the negligence of a fellow-servant or was in consequence of a risk which he voluntarily assumed, he might still be defeated by the contention that there was some contributory negligence, however slight, on his own part. This last completed the trinity of legal obstacles

that confronted the crippled railway workman in court, or barred the way to the widows and orphans of the hundreds of employees slain on the rail every year. It was said in a Senate debate that in 1897 the railroad workers collected damages for less than 13 per cent of the accidents that befell them.

Thus trainmen could not look to their employers to protect their families in event of injury or death, and the big insurance companies would not insure them, except at a rate which few of them could afford to pay. Indeed, most of the companies would not accept them at any rate, while other companies issued endowment policies for switchmen, for instance, at a premium based on a twenty-year advance in age; if only twenty-five years old, the switchman must pay as much as a man of forty-five. The insurance actuaries thus calculated that when a man became a switchman, he thereby cut twenty years off his reasonable expectation of life.

The only feasible means of mitigating the severity of the situation in which the railroad workers found themselves was to establish insurance and benefit funds of their own and thereby share their burdens. Among Mr. Moseley's papers, a statement was found on this subject, bearing date of 1908, in which the enormous payments of the employees out of their wages for the relief of their unfortunate fellows is set forth in the following figures:—

Since its organization, the Brotherhood of Locomotive Engineers has paid out in benefits for deceased and disabled members \$17,700,228.71, and in the twelve months

ending November 1, 1907, its beneficiary payments amounted to \$1,411,500.05.

The Brotherhood of Railroad Trainmen has paid out a total of \$12,006,609.83, and from January 1, to November 1, 1907, its payments amounted to \$1,508,185.37.

The Order of Railway Conductors has paid out \$9,540,000, and in the period from January 1 to November 1, 1907, its payments amounted to \$723,000.

The Brotherhood of Locomotive Firemen has paid out a total of \$10,549,765, and in the fiscal year ending June 30, 1907, its payments amounted to \$947,100.

The Switchmen's Union, which is a comparatively young and small organization, has paid out \$820,000 in death and injury benefits, and in the period from January 1 to November 1, 1907, its payments amounted to \$189,300.

Here is a total of \$50,616,603.54, which these organizations have paid out to the families of deceased and disabled members.

This condition of affairs forced itself upon Mr. Moseley's attention and sympathy while he was fighting for the Safety Appliance Law and collecting the statistics of death and injuries among railroad men, and he began to look for a remedy. Early in his study of the question, he came upon the epochal declaration of Emperor William I, to the Reichstag in 1881, and the sentiment expressed then by the old Kaiser appealed to him as an example of noble statesmanship :—

We consider it our imperial duty to impress upon the Reichstag the necessity of furthering the welfare of the working people. We should review with increased satisfaction the manifold successes with which the Lord has blessed our reign, could we carry with us to the grave the consciousness of having given our country an additional and lasting assurance of internal peace, and the conviction that we have rendered the needy that assistance to which they are justly entitled. Our efforts in this direc-

tion are certain of the approval of all the federated governments. We confidently rely on the support of the Reichstag, without distinction of parties. In order to realize these views, a bill for the insurance of workmen against industrial accidents will first of all be laid before you.

The first Employers' Liability Act for railroad employees engaged in interstate commerce introduced in Congress was drawn by Mr. Moseley, but, as he afterwards said, "If I had admitted it, my head would have come off instantly." The bill was introduced by his request in 1895, only two years after the passage of the Safety Appliance Act, merely because he wished to see a start made and without any hope of having it taken up at that time. When, however, in 1898, he appeared before the industrial commission appointed by President McKinley, he did not hesitate to avow his authorship of the measure, and he submitted a copy of it to the Commission. When at last President Roosevelt took his stand for such an enactment, Congress passed the Employers' Liability Law of 1906.

The railroad attorneys promptly assembled to plan a campaign against it in the courts. To meet them, Mr. Moseley successfully urged upon the administration the adoption of a policy of vigorous defense. The precedent that he was able to cite in support of his proposal was the legal innovation, for which he was responsible, in the Johnson case. In the course of the able paper he prepared and submitted to the administration, he said:—

This law is the most important piece of legislation affecting the just rights of labor that has been enacted in many

years; indeed, it is probably the most fundamental and far-reaching statute in the interest of the wage worker that has ever been enacted by the national government. It virtually affects the economic and social well-being of a large and intelligent section of our laboring population, and they are naturally interested in the preservation of its integrity. It is a matter which depends largely upon the learning and ability with which the points involved are presented to the courts for adjudication, and when it is considered that the very highest legal talent of the country is enlisted on the side of the railroads, the disadvantage at which the laborer's side of the case is placed can be readily seen.

The first instance, as the writer believes, in which the government intervened in a private suit to maintain the integrity of a law passed by Congress was the case of *Johnson v. the Southern Pacific Company*. . . . No law really has its full benefit until it is passed upon by the highest court in the land, and in reaching that court it is important that every point which would make for the integrity of the law should be saved. It is therefore respectfully suggested that United States district attorneys be directed to inform the department of justice of any cases that may arise in their districts where the Employers' Liability Law is involved, and keep the department informed of the progress of any of these suits, so that the government may protect the law as far as it may properly do so.

It is also respectfully suggested that a general brief be prepared with the utmost care, for use as far as applicable in any case that may arise under this law. It is in no way urged that the government should go farther than to protect the law and the evident intent of Congress in passing it, and no question of fact surrounding a particular case should engage the attention of the law officials of the government.

It may be a new theory, but is it not well within the province of the attorney-general of the United States, when the constitutionality of any act passed by Congress is called in question, to use the resources of the government to the fullest extent in his power to protect the in-

tegrity of that act, particularly when, as in this case, the measure is one which is designed to protect the just rights of a vast body of our country's working citizens, and to relieve them from the disabilities entailed upon them by the failure of powerful railroad corporations to provide suitable appliances and facilities for the protection of the lives and limbs of their employees?

Mr. Moseley rejoiced in soon making the announcement to a colaborer in the movement for the law, that the administration had determined to act, saying:—

The administration has decided to stand behind the Employers' Liability Law, and the government will intervene in any case that may be brought up for the purpose of defending the constitutionality of the law. This was decided at a Cabinet meeting a few days ago, and the attorney-general issued a statement, which was given to the press, in regard to the matter. I inclose a copy of this statement herewith.

I regard this action as one of the most important events in the interest of labor that has ever occurred. Were railway employees, who seek to obtain damages for injuries received, left to their own resources there is no question that the benefits which this law seeks to confer upon them would be neutralized or entirely destroyed by the action of the courts.

The railroad companies have the strongest array of legal talent in the country, and this talent will all be directed toward defeating the ends of any such law as this. No private individual can hope to cope with such a power; it will be impossible for any railway employee, who invokes the aid of this law, to employ attorneys who can successfully meet the arguments of counsel for the railroad companies. But with the resources of the department of justice placed at his command, in order to protect the integrity of the law, the railway employee is placed on a plane of practical equality with the railway company, and he is thus insured a square deal.

Mr. Moseley followed up the subject with all his energy and enthusiasm, and as the judicial contest was drawing to a close, he reported his feelings in this note to a friend : —

I take pleasure in sending you two opinions sustaining the constitutionality of the Employers' Liability Law. If we can only win in the Supreme Court on April 8, when the case is to be heard there, it will be one of the greatest boons that the railroad men could have. We are then out of the woods with this law which means so much to railroad employees, their widows and orphans. I am so interested in it I hardly sleep nights, waiting for the outcome of the hearing in the Supreme Court.

In another letter to an editor he disclosed this characteristic bit of strategy : —

Your treatment of the Employers' Liability Law is grand. The members of the Supreme Court should see it. Can you not in some way get this article into their hands? I do not know that there is any impropriety in your sending it to them, but it won't do, of course, for me to be connected with it in the slightest degree.

I send you a list of the justices of the Supreme Court. You can send the magazine without marking the article, and certainly some of them will find it and read it. Your first editorial is also splendid — "The Death Roll of Industry." Do send an unmarked copy to them all. If you have them to spare, it would be good to send to the circuit judges.

The Supreme Court disappointed his eager hopes in its decision handed down on January 6, 1908. By the familiar vote of 5 to 4, a majority of the justices held that the act was invalid because it did not in express terms limit its effect to railroad employees actually engaged in interstate commerce at the time of the injury ; but the court was so divided that no less than five

different opinions were rendered. President Roosevelt insisting upon a new act, Congress promptly passed, on April 22, 1908, another Employers' Liability Law, which has now been unanimously sustained by the Supreme Court.

When Mr. Franklin K. Lane, then a member of the Interstate Commerce Commission, was invited to address the National Civic Federation on the subject of this law, he replied : —

I feel very much honored at this invitation, but I want to make a suggestion to you, both in the interest of the law and in the interest of your meeting, viz. that you invite Hon. E. A. Moseley, Secretary of the Interstate Commerce Commission, to make this address. As you probably know, Moseley is the father of this law and is in more intimate touch with railroad employees than any other man in the country, in all probability. I think the honor is due him to appear before your body on behalf of this measure because of the work he has done.

Mr. Moseley, being unable to address the Federation, made some significant observations in his letter of regret : —

The national law has set a pace, and our efforts should in no wise be relaxed until this doctrine is established in every state of the Union. The rules relating to fellow servants and assumption of risk, made by the courts, should be done away with, and the question of contributory negligence, which is a matter of fact, should be left to the jury.

The national law, following the rule of admiralty, allows the jury to determine the extent to which the employer or employee is liable, and the award shall be rendered accordingly. This, it is hoped, will prove workable. If an enterprise is obviously dangerous, the capital embarked

therein should not be exempt from such losses as arise from the obviously dangerous character of the business. The crowding upon the laboring element of all the burden of industrial accidents cannot be justified upon any ground of justice or public policy. No two of the apologists for the present rules of law, denying to workmen the right to recover, can agree upon the ground or basis for such rules. They are entirely out of harmony with the humane spirit of the present age.

The great majority of people in this country are wage earners. The law's delays and the fact that they and their dependents bear the burdens of these industrial accidents is awakening a spirit of dissatisfaction which the statesmen of our country may well heed.

In the progress of the long movement for this law, which Mr. Moseley started in 1895, he was carried by his own experience and the example of some great foreign nations to a still more advanced position. Even before the first Employers' Liability Act was passed, he had become an earnest advocate of a Federal compensation act for injured employees engaged in interstate commerce. Mr. Taft having consulted with him early in his campaign for President in 1908, and having invited his counsel on the general subject of legislation in behalf of railroad labor, Mr. Moseley wrote him the following letter outlining a workman's compensation law :—

September 29, 1908.

MY DEAR MR. TAFT:

One of the most important and far-reaching questions affecting the rights and interests of labor is that of workmen's compensation. President Roosevelt has taken an advanced stand on this question, and the law passed by Congress at its last session granting compensation to government employees in case of injury marks a long step in advance.

It seems to the writer that this matter is one that may well be agitated during the present campaign, and some expression as to the policy of the incoming administration in dealing with this question would undoubtedly be of interest to workingmen at this time. In the hope, therefore, that I may be able to suggest some thought that may be of service to you along this line, I want to quote the following from a speech delivered by me to the Railroad Trainmen at Buffalo, on May 15, 1905: —

“It should be remembered that no Safety Appliance Law, no matter how perfect or how well administered, can wholly relieve you from the dangers of your calling. . . .

“The railroads provide certain sums of money every year for renewals and repairs, as a necessary detail of business administration. A certain number of ties and rails must be replaced; bridges and buildings must be rebuilt or repaired; engines and cars are worn out or destroyed, and must be replaced; fuel, oil, and other necessary supplies must be furnished to keep the railway equipment in running condition. All these are necessary expenses which the railroads accept without question, as legitimate charges to be borne by the business. But what about the necessary waste of human life and limb? Just as there are a certain number of cars and engines, rails and ties, worn out and destroyed every year, so there is a certain number of human beings worn out or destroyed; the business itself exacts its toll of human life and limb just as certainly, and in a ratio that can be as accurately predicted, as is the case with the rails and ties, its cars and engines.

“Now, I contend that compensation for this necessary waste of human life and limb is just as legitimate a charge upon the revenues of the railroads as is compensation for the necessary waste of the inanimate, insensate factors of equipment — the ties and rails, the engines and cars. If they provide money for one, they should for the other, since both are absolutely necessary results of running the business. Under present arrangements the money for renewals and repairs of inanimate equipment is cheerfully provided and paid without question, but the only money spent on the animate, the human equipment, is that spent in salaries to high-priced legal functionaries to avoid

payment of such damages for the death or injury of employees as the courts may say they are legally liable for!

"And when a man goes into court to obtain payment for the loss of an arm or leg, when a widow goes into court to obtain compensation for the death of her husband and the father of her children, they find themselves confronted by legal doctrines that operate by judicial construction almost wholly in the interest of the employer, such as the doctrines of fellow servant, assumption of risk, and contributory negligence. We have attempted to cover assumption of risk by section eight of our Safety Appliance Law, but the only result has been to substitute therefor the plea of contributory negligence. If a man is now injured or killed in the most ordinary method of performing his duties, the chances are that if he or his widow goes into court to obtain compensation, this question of contributory negligence will be raised, and the case is more than likely to be thrown out of court on that ground alone.

"Such cases should never go into court. The unfairness of requiring a widow, or the wreck of a former strong railroad man, to go into court, and after two or three years' fighting under the most favorable conditions to obtain a sum of money, the greater portion of which is spent in repaying counsel who have to fight the case on a contingency, is so apparent that it is a wonder we, calling ourselves a civilized people, permit such a system to endure for a moment.

"We should have a compensation act, under which the maimed employee or the widow of the employee killed, would receive a regular annuity, based upon the earning power of the one killed or injured. The public obtains the benefit of the lives and limbs regularly wasted in handling the traffic of the country. The lives of the public are intrusted to you, and our daily existence is directly and indirectly dependent upon the products hauled by you at a regularly recurring expenditure of life and limb, and I say the public should pay for the necessary cost, and let the railroads collect it for the benefit of the killed and injured. It is merely a question of administration, and there should be no difficulty about providing the means.

"As a matter of fact, the economy of such a law would

be incalculable. In the first place it would furnish the strongest possible incentive to the railroads to provide all obtainable safeguards, and maintain them in proper condition, so as to reduce the number of casualties to the lowest possible minimum. Next, it would do away with the expense of maintaining expensive claim and legal departments whose main function is to combat the question of damages. Many other items of saving in present expense to the railroads could be suggested, and I have no doubt that on the whole, if the entire burden of the necessary expense of such a system were to fall upon present railroad revenues, the roads would find themselves largely the gainers. The gain to the public would also be great in having the court calendars clear of all this litigation. The feeling of contentment that would come with the knowledge that the men were having a square deal are factors that from a social and economic standpoint should have great weight. . . ."

Trusting that these quotations may be of service to you and that you may think the matter of sufficient importance to deal with it in some of your speeches, I am,

With great regard and respect,

EDWARD A. MOSELEY.

There is reason to suspect that Mr. Moseley inspired if he did not actually draw a compensation bill which was introduced at the following session of Congress. Since then a proposed law has been submitted by the Employers' Liability and Workmen's Compensation Commission. It is pathetic to read a letter to a correspondent, in which Mr. Moseley described the progress of the project and his connection with it:—

As I telegraphed you to-day, I am intensely interested in the subject you speak of, that is, the workingmen's compensation. This is bound to come, and there are a number of railroad officials who favor it. . . . The President has for two years and a half had — working

on this subject. He has been trying to overcome the inhibitions of the constitution.

This is the point Senator —— has been more than interested in, and he, himself, has endeavored to perfect a measure which would hold water. I have had a dozen or more interviews with the senator, where he has sent for me to tell me how interested he is in the subject and how anxious he was to get a bill which could not be overturned on account of being unconstitutional. . . . When I can see that on the statute book I will say, "Oh, Lord, now let thy servant depart in peace," for I will then think my life work accomplished.

While he was not to see the compensation law on the statute book, he saw the dawn of the day of this larger measure of justice.

CHAPTER XIV

SAVING TEN THOUSAND MEN A YEAR

WHILE safety appliances have been the means of saving thousands of men from death and injury, it is difficult to express the saving in figures that are exact.

In the first place the total number of men employed and exposed has grown enormously since the law went into full effect in 1900, and in the next place the great increase in the length of trains and other radical changes in conditions of employment enter in and confuse the statistics. Finally, the Safety Appliance Act affects only the coupling of cars and the control of trains, and does not touch the other perils of railroading.

Mr. Moseley watched with keen solicitude the growth in the number of casualties on the rail and had his share in the work of framing and forwarding other legislation for their prevention. He viewed with pardonable satisfaction, however, the great decrease in the rate of coupling accidents.

In a memorandum which was prepared on November 30, 1909, it was shown that while in 1893 one man was killed for 349 employed in coupling and uncoupling cars, the number so employed for each one killed in 1908 was 983 — an increase in safety from death amounting to more than 181 per cent. In every group of 13 so employed in

1893, one was injured, while in 1908 there was only one injury in each group of 62, an increase in safety from injuries amounting to 376 per cent.

A clearer and more impressive deduction from these figures was made in the statement that if the accidents due to coupling and uncoupling had increased in the same ratio as the number of men employed increased since 1893, there would have been 486 men killed and 13,724 injured in coupling accidents in 1908 instead of the actual number of 198 killed and 3116 injured. In other words, we should have had a total of 14,210 men killed and injured in coupling at the old rate which ruled before safety appliances came in, rather than the actual total of 3314 in 1908.

By the latest reports it is seen that coupling accidents are now only $6\frac{1}{2}$ per cent of the total casualties among railway employees, whereas they once amounted to 44 per cent of the total. There were 9063 coupling accidents in 1893, when there were only 179,636 trainmen employed. In 1911 there were 281,645 trainmen employed, but only 3428 coupling accidents occurred among that great number. Those figures plainly tell the story of more than 10,000 trainmen saved from death or injury in one year by the Safety Appliance Law. Surely no other act of Congress, not even the organic law of the noble Life-saving Service, has as much to its credit.

In this instance, as always, justice cost nothing. The railroads as well as the men were benefited by safety appliances. The first cost of installing the new system may well have staggered the companies. Once it was in

operation, however, it proved to be a welcome measure of economy and efficiency.

The late E. H. Harriman commended the law in a talk with Mr. Moseley, and as early as 1901, Mr. F. A. Delano, general manager of the Chicago, Burlington and Quincy Railroad, wrote Mr. Moseley that it would be extremely difficult, if not impossible, to transport the present business, if the link and draw bar were still in use, without greatly increasing the number of engines. Mr. Delano added that the number of trains broken in two with safety

TABLE I

NUMBER OF TRAINMEN EMPLOYED, WITH NUMBER KILLED AND INJURED COUPLING AND UNCOUPLING CARS FOR THE YEARS ENDING JUNE 30

YEAR	NUMBER EMPLOYED	NUMBER KILLED	NUMBER INJURED
1893	179,636	310	8753
1894	160,033	181	5539
1895	157,731	189	6077
1896	162,876	157	6457
1897	161,398	147	4698
1898	170,708	182	5290
1899	178,851	180	5055
1900	191,198	188	3803
1901	209,043	163	2377
1902	225,422	141	2457
1903	253,660	211	3023
1904	253,834	269	3506
1905	265,175	217	3316
1906	285,556	266	3590
1907	317,808	272	4062
1908	281,645	198	3116

appliances is less and the cost of general maintenance lower, while it would be extremely dangerous and practically impossible to operate the present trains at prevailing speed without the power brakes, and switching is greatly expedited.

The Safety Appliance Act made possible a remarkable development in train operation. Automatic couplers were so much more effective than the link and pin in holding trains together that trains have doubled in length since the law went into force. This has greatly reduced the

TABLE II

RATIO OF CASUALTIES TO TRAINMEN FROM COUPLING AND UNCOUPLING FROM TOTAL ACCIDENTS TO TRAINMEN FOR THE YEARS NAMED, ENDING JUNE 30

YEAR	KILLED PER CENT	INJURED PER CENT	TOTAL KILLED AND INJURED PER CENT
1893	19.78	46.37	44.33
1894	17.59	42.27	40.48
1895	18.59	41.20	39.75
1896	14.63	40.52	38.88
1897	15.16	34.06	32.80
1898	15.95	33.81	32.60
1899	15.58	30.34	29.38
1900	13.47	21.64	21.04
1901	10.60	14.22	13.91
1902	8.42	11.51	11.29
1903	10.19	11.77	11.66
1904	12.72	11.98	12.03
1905	10.90	11.11	11.10
1906	11.52	10.26	10.34
1907	10.72	9.97	10.01
1908	10.75	8.70	8.80

cost of hauling. The average tonnage per train when the law went into effect was 184; the average now is 383. The link and pin could not hold such a train together. Justice pays.

The success of the law lay in its intelligent enforcement. The Commission having left this task to Mr. Moseley, he developed a remarkably efficient body of inspectors.

There was something characteristic in the standard of selection which he adopted. If the inspectors really were to inspect, they must be practical railroad men, and if they were members of the railroad brotherhoods, they would be more likely to feel a sympathy with the object of the law — the protection of their brethren from injuries. Moreover, they could inspect effectively only by going into switchyards without let or hindrance from officials, and mingling freely with the employees. Mr. Moseley, therefore, resolved that he would not have the inspection service turned into easy berths for political workers or into a training school for high school novices certified by the Civil Service Commission. The latter Commission agreed to a rule, proposed by Mr. Moseley, that no one should be eligible unless he had a record of at least six years of active service in the actual operation of trains as engineer, foreman, conductor, trainman or yardman.

It was with a good deal of reluctance that the Civil Service Commission permitted the appointments to be made without a civil service examination, and they consented only on the condition that all the recommendations and everything relating to the selections should be sub-

mitted to their consideration. When some one complained that few or no non-union men were chosen inspectors, Mr. Moseley explained in the following letter in 1908, that since the eligible class under the rule comprised a total of 285,556 trainmen, 274,402 of whom were members of organizations, it naturally followed that the inspectors would be union men :—

You will see that it is a practical impossibility to secure inspectors who are eligible to appointment unless they are members of the organization. Personally, I cannot see what possible objection can be urged against an inspector belonging to one of these railway labor organizations. Practically all the railroads of the country treat with these organizations; their wages and conditions of service are determined by the method of collective bargaining, and it may be assumed that the railroads have found this method satisfactory or they would not continue it.

Those ignorant of the fact might claim that this is a recognition of the closed shop principle, but nothing is farther from the truth. It is a fact that in the entire history of these railway labor organizations no objection has ever been raised to the employment of men who are not members. If there is any employment in the world that is run on the open shop principle, it is certainly that of railroading. . . .

The policy of selecting these safety appliance inspectors from the classes indicated in the regulations was adopted, with the approval of the President, with the idea of employing them from among those persons who are directly at risk and in whose interest the law was primarily enacted. That their service has been highly efficient and entirely satisfactory, is proved by the records of this office relating to prosecutions for violations of the law. In the cases that have been brought in court to date, involving more than two thousand separate violations of the law, only six have been decided adversely to the government, and those adverse decisions were in no case based upon the facts, but upon interpretations of the law which were con-

trary to the views held by the Commission. All of these cases have been appealed, in the effort to have the Commission's interpretation of the law sustained. In not a single instance have the facts on which inspectors based reports for violation of the law been controverted.

Mr. Moseley took much pride in the character and spirit of his corps. He guarded it vigilantly against the introduction of unfit and unworthy applicants, however powerful their indorsers might be. In declining to appoint a man recommended by one of the foremost members of Congress, he wrote :—

I am sure you will understand that I have no personal motive in this matter but that I write you this fully and frankly, having in mind your interest, which I believe will be subserved by advising you of the true situation, as well as the interests of that large body of our fellow citizens, for the protection of whom this legislation was enacted.

I inclose you a list of names of men who have been appointed to these positions and the reasons for which they were appointed. You can readily appreciate the number of applications which have been made, — some of them indorsed by entire state congressional delegations, but not a man has been selected whose name was suggested to me by any one other than as stated in my memorandum to you.

Another letter to a most influential Massachusetts man, who proposed the appointment of a person from Mr. Moseley's own home neighborhood, discloses his scrupulous care in the selections :—

My only reason for hesitation at all in the matter has been the fact of his residence in my immediate neighborhood and the possible room afforded by the fact of an imputation to me of making such appointment from per-

sonal consideration alone. The rule that has always governed me in such matters is to avoid the appearance of being controlled by such considerations. I have never made an appointment to any position by reason of any personal association or connection with myself.

A recent report of the Interstate Commerce Commission noted that, in all, \$206,600 had been collected in judgments against railroads for violations of the Safety Appliance Act since it went into force. On this subject of prosecuting violators of the act, Mr. Moseley once wrote to the then president of the Illinois Central Railroad a letter which displayed his fairness of spirit in the work of enforcing the law :—

May 7, 1904.

MR. STUYVESANT FISH,
135 BROADWAY, NEW YORK, N.Y.

DEAR MR. FISH:

Your kind letter of the fifth instant has been received, and I am more pleased with it than I can well express, because it leads me to believe that one railway president, at least, understands me.

The institution of prosecutions for violation of the law is always a disagreeable duty, and the enforcement of the safety appliance and accident report laws is never resorted to until after repeated requests for compliance with the requirements of these statutes have been disregarded. One controlling reason for this indulgent practice is found in the fact that failure to observe the mandatory provisions of these laws is, as a rule, due to the neglect of subordinates in the railway service.

As executive officer of the Commission and having the matters relating to safety appliances and accidents particularly in charge, many things done by me in an official capacity may seem harsh to those who have given little attention to the exigencies of this administrative work and the fair and ample opportunities always allowed to carriers for the correction of defective appliances. The dis-

charge of the duties enjoined under these laws could be rendered much easier, and the attitude of executive railway officers in all cases be one of friendly coöperation, if the matter should be made the subject of conference with me whenever any such officer believes that his company has been treated harshly or unfairly in any degree. . . .

With great regard and respect, I am,

Very truly yours,

EDWARD A. MOSELEY.

While engaged in the task of seeing that the two million or more freight cars and locomotives in the United States were equipped as the law required, Mr. Moseley did not neglect the little stretch of rails across the Isthmus of Panama, when the government acquired it, or the small amount of rolling stock belonging to navy yards. Moreover, the advanced stand which this country took for safety appliances and the effective methods adopted for enforcing the Federal statutes on the subject exerted an influence entirely beyond the jurisdiction of the United States government, attracting the attention and exciting the envy of other nations.

It is not often that our laws are looked upon as models for English legislation, but *London Punch* lately pointed to the Safety Appliance Acts as an example to be followed by Great Britain. In a full-page cartoon, a trainman is shown crouching between the bumpers of cars equipped with the antiquated link and pin. "An Old Reproach" is the headline, and Mr. Punch says, in allusion to a pending arbitration: "Glad they're settling the question of hours and wages; but what about the question of life and limb? Railway returns show an appalling

number of deaths and injuries among shunters. This number might be enormously reduced by the introduction, as in America, of automatic coupling."

Already British officials had taken a lively interest in safety legislation in the United States, and for some time several distinguished members of the government were in correspondence with Mr. Moseley, notably Sir Francis J. S. Hopwood, who repeatedly drew upon the experience of his American correspondent and who made grateful acknowledgments of his indebtedness. "It is very good of you to pay so much attention to friends I introduce," Sir Francis wrote Mr. Moseley, relative to visiting representatives of the British Board of Trade, whom he had accredited from time to time, "but the consolation to you must be found in the fact that you promote a good cause on this side of the Atlantic."

When it was proposed in 1909 to take the work of enforcing this humane legislation out of Mr. Moseley's hands, the representatives of the men in whose interest the law was enacted made a convincing demonstration of their confidence in him. The proposal, however, carried no personal reflection on the Secretary. With a judge's liking for keeping administrative and judicial duties and powers nicely separated, President Taft had set up the Court of Commerce, and he contemplated a new arrangement whereby the enforcement of the Safety Appliance Act would be withdrawn from the Interstate Commerce Commission.

Mr. Taft was no doubt innocent of the personal bearing of the change. But a rumor of it was enough to array

the brotherhoods of railroad employees against a plan that would transfer the task from Mr. Moseley's trained and vigorous hands. The White House resounded with their protests. One official of a brotherhood wrote to another official this review of the situation :—

Mr. Edward A. Moseley, Secretary of the Interstate Commerce Commission, may justly be termed the father of safety appliance laws in this country. For twenty years he has worked with unremitting zeal in an honest endeavor to throw about the railway employees of this nation, the protecting arm of the government and to shield them in a measure from the dangers of the perilous occupation in which they are engaged. It is largely through his efforts that the Interstate Commerce Commission has to-day arrived at its present state of efficiency and that the laws enacted for the safety of employees are beginning to bring forth results ; and the earnest hopes on the part of all thinking people and the purpose of Congress are just beginning to be realized.

During the past several years, the Commission has gathered to itself many men of exceptional ability, who have a practical knowledge of modern railway methods and whose every aspiration is heartily in sympathy with the great humane work in which they are engaged. . . . Because of this effectual work, the Interstate Commerce Commission has endeared itself to the hearts of more than a million railway employees of this country. Is it any wonder, then, and can it not be justly expected that they would view with alarm the transfer of the power now in the hands of the Commission into other hands, which, to say the least, are unfamiliar with the discharge of these duties which so vitally affect our interests.

This transfer of power is an experiment at best, and it occurs to me that as the path leading up to the present state of efficiency of the Interstate Commerce Commission has been a rugged road indeed, fraught with numerous perils and much suffering on the part of railway employees, we might justly be excused for viewing with apprehension

any proposition that might make it necessary for us to retrace the same rugged road.

This is not a question in which material things alone are involved; to us, it is a question of life or death; it is a question in which the widow's anguish and the orphan's tears might well be pointed to as a mute appeal against any change in the department of government to which they have learned to look for protection. Therefore, I hope and believe that you will take such steps as in your judgment will bring to the attention of the President, most forcibly, the light in which we regard his proposed recommendation, and, failing in that direction, you will, or authorize me to, bring all possible power to bear upon Congress, by circular letter to all lodges, or in any other manner you may deem advisable, to the end that if such recommendation is made over our protest, we may block its successful carrying out by Congress.

I have requested an audience with the President, and it will doubtless be granted within the near future. I shall use my best efforts to apprise him of the apprehension with which we view his contemplated recommendation.

Please find attached, copy from the *New York Evening Post*, which may be of value to you in this struggle. All of the above is for your information and consideration.

In another letter between the thoroughly aroused brotherhood officials, this was said by one of the highest and most prominent railway labor leaders:—

. . . I am writing to ask if you do not believe that a meeting should be held in the city of Chicago, or some other convenient place, in the near future to discuss what method shall be taken to prevent, if possible, the transfer of administrative authority over the enforcement of Safety Appliance Laws from the Interstate Commerce Commission to the Secretary of Commerce and Labor.

In still another letter, the writer gave this estimate of Mr. Moseley's work:—

You know as well as I do Secretary Moseley's whole heart and soul are in this particular line of work, and what has been accomplished by a small number of men in a short period of time is very familiar to you, and one reason for this splendid showing made by the safety appliance inspectors, they strive to give results to one whom they love and respect, because they know Secretary Moseley's whole being is wrapped up in the safety of the men engaged in the train service. To me it would seem a crime to separate Secretary Moseley from the safety appliance division.

I am sure, if necessary, every lodge of our brotherhood in the United States would pass resolutions against a movement to change the safety appliance division away from a department that has accomplished such splendid results for our men.

President Taft was not unnaturally surprised and perturbed by the bombardment, and the earnest persistence of the brotherhood officials, in letters to the President and calls at the White House, did not leave him in doubt that the protest was as genuine as it was strong. In a few days he assured Mr. Roe, who presented himself as the representative of two of the brotherhoods and as the man responsible for sounding the alarm, that the project would not be pressed.

The episode is recalled here only to put on record the grateful appreciation of the representatives of a host of railway workers toward a man who, when friends were few in Washington, had boldly befriended them and who had devoted a score of years to their protection from death and wounds and injustice.

CHAPTER XV

TWO GREAT MEASURES

MR. MOSELEY was the first person invited to discuss labor legislation before the National Industrial Commission of 1898. He prepared for his appearance before that body with his usual thoroughness, and there is no better record of his reasoning powers, his spirit of independence and fairness, the breadth of his mind, and his advanced position than may be found in the official report of his testimony and examination.

The Commission had been appointed by President McKinley in obedience to the orders of Congress and charged with the task of inquiring into economic and industrial conditions. The country was only emerging from a long period of hard times and entering an era of extraordinary material development. People were thinking almost altogether of encouraging business, and statesmanship was absorbed in the work of legislation for the interests of property.

Mr. Moseley, however, was still thinking of men, not money, and he announced to the Commission, "I am here solely as a citizen whose whole heart is wrapped up in the subject of the relations between capital and labor and the proper position which they should occupy to each other." Among the bills which he drafted and proposed

was an act requiring railroads to report all collisions and accidents, with the causes and surrounding circumstances.

This act became a law in 1901, and as Secretary of the Interstate Commerce Commission he inaugurated the Quarterly Accident Bulletin, which became in his hands an important feature of the administrative activities of the Commission. The bulletin showed a rapidly increasing number of deaths and injuries on the rail, notwithstanding the adoption of safety appliances. That was Mr. Moseley's purpose when he urged the Accident Report Law, and under it he was enabled to prove that the railroads of the United States were still injuring relatively twenty-nine times as many persons as the railroads of the kingdom of Prussia. The Accident Bulletins show that a passenger in this country is injured every 39 minutes and an employee every 11 minutes.

The publication of the reports at first disheartened, and then aroused, the supporters of safety legislation. With the passage of the act requiring automatic couplers and brakes, it was comfortably assumed that the ugly problem had been met and solved and that the work was finished. The bulletins exposed the fallacy of that assumption and disturbed the easy assurance of the lawmakers. The Safety Appliance Acts had protected only the employees engaged in coupling and braking and left untouched all other perils of railroad employment and travel.

To avert collision, a prolific source of accidents to men and passengers, Mr. Moseley took up the advocacy of a law compelling all railroads to establish the block signal

system in the running of trains, in place of the old and faulty system, under which a train dispatcher, in a moment of confusion, a sleepy boy in a telegraph office, or a worn-out flagman could wreck two trainloads of humanity.

TABLE SHOWING NUMBER OF RAILWAY EMPLOYEES ON PAYROLLS, JUNE 30 OF EACH YEAR AND THE INCREASING NUMBERS KILLED AND INJURED, NOTWITHSTANDING THE GREAT DECLINE IN COUPLING ACCIDENTS DUE TO THE ADOPTION OF SAFETY APPLIANCES

YEAR	TOTAL NUMBER OF RAILWAY EMPLOYEES			NUMBER KILLED PER 1000 EMPLOYED	NUMBER INJURED PER 1000 EMPLOYED
	On Payrolls June 30	Killed during Year	Injured during Year		
1895	785,034	1,811	25,696	2.307	32.73
1896	826,620	1,861	29,969	2.251	36.26
1897	823,476	1,693	27,667	2.056	33.61
1898	874,558	1,958	31,761	2.239	36.32
1899	928,924	2,210	34,923	2.379	37.59
1900	1,017,653	2,550	39,643	2.506	38.96
1901	1,071,169	2,675	41,142	2.497	38.41
1902	1,189,315	2,969	50,524	2.497	42.48
1903	1,312,537	3,606	60,481	2.747	46.08
1904	1,296,121	3,632	67,067	2.802	51.75
1905	1,382,196	3,361	66,833	2.431	48.36
1906	1,521,355	3,929	76,701	2.583	50.43
1907	1,672,074	4,534	87,644	2.712	52.42
1908	1,458,244	3,470	83,367	2.380	57.17

He simply advocated that all railroads should be compelled to do what some railroads had voluntarily done in adopting the block signal method. He continually preached the doctrine through the accident bulletins and in the press.

In accordance with his recommendation, the Commission, in its report to Congress for 1903, advocated a law making the use of the block system obligatory, and the draft of a bill was presented. Mr. Esch, of Wisconsin, a prominent member of the House committee on interstate and foreign commerce, introduced the bill, and Mr. Moseley aided him with arguments and statistics in support of it. A strong effort was made to have the bill passed in 1906, but it was urged that Congress did not have sufficient information concerning the use and need of block signals and automatic train stops to enable it intelligently to legislate. Mr. Moseley thereupon secured the passage of a joint resolution, authorizing an investigation of the entire subject, together with tests of such automatic appliances as promised to contribute to the safety of train operation.

Under this resolution a board of experts was appointed, and a thorough investigation was made. This board has made several valuable reports, stating definite conclusions in favor of both the block signal system and automatic train control appliances, which in due time Congress probably will adopt, and which probably would already have been adopted had Mr. Moseley been spared to urge and steer the movement to that end.

When such a law finally is in operation, we are likely to have fewer head-on or rear-end collisions, and the greatest terror of travel on railroads will be much lessened. Then there will be automatic signals on every railroad in the country to warn the engineer of the near presence of a train ahead. If he should run by the signal, — one

engineer reported 256 signals on a run of 148 miles at a speed of nearly a mile a minute, or a signal to be observed and obeyed every 35 seconds, — it is hoped that it may prove feasible to have a little mechanical contrivance which will automatically correct him and bring his train to a stop. In the agitation that prepared the way for this important life-saving measure, Mr. Moseley was the pioneer, but in pursuance of his invariable custom, he held himself in the background, taking no credit and not even permitting his name to appear in connection with it.

In an article which he wrote for the *Review of Reviews* in 1904, on "Railroad Accidents in the United States," he set forth arguments and statistics, not only in support of block signals, but in favor of still other laws for the protection of life on railroads. He divided all accidents to passengers into two classes, preventable and unpreventable, and he showed that a far larger number are killed and injured in the former than in the latter class.

Among the preventable accidents, he enumerated those due to the absence of block signals, to overworked trainmen, to defects in the train order system, to the lack of a third man on locomotives, and to other lesser causes that are avoidable. He concluded his article with these suggested remedies: First, block signals; second, a reformed train order system; third, shorter hours of service; fourth, a third man on all modern, high-speed locomotives; fifth, relieving conductors of heavy, high-speed trains from ticket taking and every other responsibility except that of running the train; sixth, the employment

of only experienced men in responsible positions ; seventh, the laying of a second, third, and fourth track as rapidly as practicable for the accommodation of the growing traffic.

While advocating the block signal in place of human beings to guard against collisions, Mr. Moseley joined in the movement for regulating by law the hours of service for trainmen. He took care that the quarterly bulletins should regularly point the moral in support of the latter measure.

For accident after accident such causes as these were assigned in the reports from the railroads: "Flagman sent back to protect rear of train, but fell asleep at side of track, after twenty-one hours on duty ;" "Sent out with flag, but fell asleep on track, after fifteen hours on duty ;" "Crew fell asleep, after twenty-seven hours on duty ;" "Engineer ran by signals, after fifty-nine hours on duty, with only two hours sleep ;" "Engineer and brakemen asleep, after eighteen hours on duty ;" "Flagman asleep, after sixteen and one half hours on duty ;" "Flagman and conductor asleep, after eighteen hours on duty ;" "Engineer asleep — discharged — after thirty-eight hours on duty ;" "Disobeyed signals, after forty-eight hours on duty ;" "Mistook red signal for green, after twenty-one hours on duty ;" "Engineer did not keep proper lookout, after twenty-two hours on duty."

It is just to say that many railroads had rules which prescribed proper hours of labor, but if the men were willing they were permitted to work extra and thereby earn more pay. It was therefore simply a question of

financial temptation and physical endurance on the part of the men. A letter from the mother of a railroad workman called out this statement of Mr. Moseley's views a few months before the publication of his article in the *Review of Reviews*: —

August 4, 1904.

DEAR MADAM:

Your letter of July 19 to the Secretary of the Department of Commerce and Labor has been referred to this Commission.

I am greatly interested in your letter, and do wish that something could be done to embody in legislation the ideas you have so well expressed, especially with regard to the excessive hours of labor to which railroad trainmen are subjected. It is really shameful the way men are driven, and the consequences are something terrible, leading not alone to a direct loss of life in many cases, but also to the physical and moral degeneration of the men themselves.

It was only two or three days ago that, in discussing this very question with the chief executive of one of our largest and most conservative railway organizations of employees, he said to me, "Do you know that the use of intoxicating liquor by locomotive engineers is largely on the increase?" I expressed surprise at the statement, and asked him to what he attributed the fact.

He replied that it was directly due to the excessive hours of labor to which the men were subjected. The monster engines and heavy trains now in service are a terrible strain on the men under the best conditions conceivable, but when they are compelled to be on duty from eighteen to thirty-six hours at a stretch, under the terrible nervous strain that is an ordinary incident of modern railroading, they simply go to pieces, and it is not surprising that they should resort to stimulants to drive their jaded bodies and nerve them to the work before them.

This gentleman informed me that it was his intention to start an agitation within the ranks of the organizations for the purpose of appealing to Congress to pass a law limiting the hours of labor of railroad men, and prescribing

penalties for its infraction. This is really one of the most important matters affecting the safety of the traveling public that can be imagined, and public interest should be aroused to the gravity of the situation.

The Interstate Commerce Commission publishes quarterly reports of accidents on railways in the United States, the last published one of which I inclose herewith. These bulletins are made up from reports which are furnished to the Commission by the railroads themselves, and furnish numerous instances where the inference is plain that accidents resulted from men being too long on duty. In the inclosed bulletin you will note two cases which I have marked, resulting in the death of two persons, and both of them were undoubtedly caused by the men being worn out by excessive hours of duty. Engineers and flagmen do not go to sleep at their posts unless they are completely worn out.

The question of ambulance cars and facilities for giving first aid to the injured is of importance, and I understand that many of the western roads have been long in the habit of carrying emergency chests on their trains. It ought to be a general condition, and employees ought to be given regular instruction in the art of giving first aid; but the question of excessive hours of labor so far transcends this in importance that it really sinks into insignificance.

I am glad to note your interest in this matter, and hope you will do what you can to widen the circle of interest until the public becomes thoroughly aroused to demand some system of legislative protection, both for the employees who have to suffer directly, and for themselves who are often indirectly the victims. In England the hours of railway servants are under the direction of the Board of Trade, and employees are fully protected by law from excessive hours of labor. It should be the same here.

Again thanking you for your good letter, I am,

Very respectfully,

EDWARD A. MOSELEY,
Secretary.

Similar expressions of interest in limiting the hours of work were introduced in the reports of the Commission

for 1904 and 1905. While President Roosevelt was at his summer home at Oyster Bay, in 1906, he read an article in the *Outlook*, entitled "Asleep at his Post." The article aroused his interest in the subject of overworked railroad employees and was the means of bringing his powerful influence to bear for the passage of a remedial law. He hastened to call upon the Interstate Commerce Commission for a report in the following letter:—

OYSTER BAY, N.Y.
July 23, 1906.

GENTLEMEN :

I am directed by the President to ask if you will inform him what legislation is needed, in view of the article in the last number of the *Outlook* entitled, "Asleep at his Post."

Very truly yours,
WM. LOEB, JR.,
Secretary to the President.

INTERSTATE COMMERCE COMMISSION,
WASHINGTON, D. C.

Mr. Moseley had already taken up the matter with the railroad labor organizations the year before, and they had joined in asking him to aid their legislative representative in the preparation of a bill. He found, however, that he could not agree with their representative in framing what he regarded as a practical measure.

When President Roosevelt took up the question, Mr. Moseley rejoiced, for he knew that Mr. Roosevelt would push it with his characteristic vigor, and compel immediate action. Legislation was recommended in the annual message of the President in December, 1906, and a hot fight ensued. The railroads at first stubbornly opposed

any interference whatever by the government, and many prominent members of the two Houses were disinclined to run counter to the railroad influences. The President, however, wrote exceedingly sharp letters to some of them, which stirred them to action.

It was a complex and difficult subject for legislation, and the railroads were able to raise many strong objections to details in any scheme of regulation. A deadlock followed, the session was near its end, and it seemed as if a bill could not be agreed upon before adjournment. It was a situation calling for concessions. While Mr. Moseley worked with the President to secure some practical result through compromise, he was in a cross fire between the representatives of the railroads and the legislative agent of the railroad labor organizations. Moreover, he felt called upon to protect the President against being dragged into a public controversy on the subject, and he found himself at times in a tight corner and bearing alone the brunt of a savage attack.

When the bill was in desperate straits and all but dead, the President called a conference, and Mr. Moseley went to the White House to advise with him and the House Committee. The President induced the committee to agree to report the bill with the amendments which Mr. Moseley proposed, and the House passed it as amended.

A conflict next arose between the Senate and House, when again Mr. Moseley was summoned to the White House to give his views to a conference committee. The fate of the bill was still in the balance on Sunday, the day

before adjournment, and Mr. Moseley made his final appeal then to the conferees of the two Houses. It was in the closing hours of the session of 1907 that the bill became a law. The Washington correspondent of the *Chicago Tribune* in reporting the President's success in the matter, said: "In this campaign the President has been greatly assisted by Edward A. Moseley, Secretary of the Interstate Commerce Commission and the real originator of the legislation."

While Mr. Moseley was far from satisfied with the law, he felt assured that it was the best that could possibly have been passed in the face of a strong opposition, and that it was a fair start toward better things. Although the legislative representative of the brotherhoods, in an uncompromising spirit which would have defeated all legislation on the subject, had tried to make it appear that Mr. Moseley was working against the interests of the railroad men, the organizations relied on his wisdom; the chiefs telegraphed him their thanks, while the legislative agent was recalled and ceased to represent the brotherhoods at Washington.

By the provisions of the Hours of Service Act, it is made unlawful for common carriers to require or permit any telegrapher or dispatcher at a night and day office to work more than nine hours in twenty-four, nor for more than thirteen hours, if employed at a place which is operated only in the daytime.

For every other employee connected with train operation, it is provided that he shall not be required or permitted to remain on duty for a longer period than sixteen

consecutive hours ; when that limit has been reached, he shall be relieved and not permitted to return to duty until he has had ten consecutive hours off duty ; any employee who has been on duty sixteen hours, not consecutively, but in the aggregate in the course of twenty-four hours, shall have eight hours off before being required or permitted to return to work.

The necessary exceptions to these rules are carefully guarded, and, thanks to this law, the Commission has been enabled to announce that mishaps, attributed to trainmen falling asleep, have almost entirely disappeared from the accident reports.

CHAPTER XVI

MEDIATION AND ARBITRATION

MR. MOSELEY successfully labored for the enactment and enforcement of many important laws; he was engaged in a continuous legislative campaign for nearly a quarter of a century. None among the statutes which he advocated, excepting only the Safety Appliance Acts, better reflected the spirit of the man than the Arbitration Law of 1898, commonly known as the Erdman Act, which chanced to take its name from a Pennsylvania congressman who was not a member of Congress when the law was passed, or the author of a line of it.

Mr. Moseley's interest in the subject was manifested as early as the period of his service in the Massachusetts Legislature, when he introduced an arbitration bill. His experience as Secretary of the Interstate Commerce Commission strengthened his conviction of the necessity of taking measures for the promotion of peace between employers and employees. In his Boston address to the Brotherhood of Railroad Trainmen on October 17, 1893, he said : —

The mind of man can hardly conceive of the desolation which might be caused whenever the men who man the brakes, fire the engine, or control its movements, combine throughout the land in an assertion of what they conceive to be their inalienable rights. The very staff of

life, bread, must at such a time be wanting in sections which had never before known the blighting touch of poverty; the winter blast will at such a time send a colder chill to hearths where lack of warmth had never before been felt. The desolation of war would be as nothing compared to the famine which organized effort on your part could create.

These considerations serve also to keep you constantly reminded of the grave and delicate responsibilities resting upon you, and particularly your chosen leaders charged in a large measure with the duty of wisely directing your actions. How grateful, therefore, should every inhabitant of this great country feel to the men in whose hands are intrusted not only fortune and the comforts of life, but life itself. The efforts of the leaders among you, as has often been shown in the past, are more frequently directed toward conciliation, and as a restraining influence in the brotherhood, than in any other way. . . .

It is no use to disguise the fact that when the public is put to inconvenience by reason of a strike, the public retaliates by denouncing the strikers. Yet slowly but surely, after the heat of the battle has passed away, public opinion finally separates the chaff from the wheat, and determines who has done the wrong and should bear the responsibility. It is, therefore, of the greatest importance, from a purely selfish point of view, that no step should ever be taken which would disturb intercourse between the people of the country in any degree without the greatest provocation; because you are bringing trouble, inconvenience, and perhaps distress upon others; and, as the rich can always look out for themselves, the burden is sure to fall more heavily upon those who are poor and can ill afford to bear it.

Already Mr. Moseley had proposed a national arbitration law — and compulsory arbitration — as a remedy for railroad strikes. In concluding an earnest and able argument for such a statute in the journal, *Transportation*, for September, 1893, he said:—

Congress has recently passed a humane law in the interest of the railroad employee, providing for the adoption of a uniform system of coupling cars, and for other appliances; and that law was intended to protect employees as far as possible from injury and death. Why should not Congress, by making arbitration compulsory, now provide for the protection of their livelihood as well? This is especially appropriate and feasible when the fact is considered that such a disposition of railway labor disputes is eminently fair, is practically certain to result in just awards, and will be for the interest of the employer as well as of the employed.

The conductors, the engineers, the firemen, yardmen, brakemen and switchmen all contribute, not their manual labor only, but their brains, their judgment, and, as statistics show, their lives too often, as against the mere money of the stockholders. Are they not, then, entitled to consideration and protection? The law affords no remedy; the courts, as at present constituted, have no power to deal with the real question. Further legislation is necessary. To the broad principle of arbitration we must look for ultimate relief! To the importance of the question involved and to the urgent need of an adequate remedy we can no longer shut our eyes with safety.

A letter which was addressed to him shortly after the publication of his article in *Transportation* and the delivery of his Boston address testified at once to his recognized leadership of the movement and to the indorsement of it by the railroad labor organizations: —

OFFICE OF THE GRAND LODGE,
BROTHERHOOD OF LOCOMOTIVE FIREMEN

TERRE HAUTE, INDIANA.

Nov. 28, 1893.

EDWARD A. MOSELEY, Esq., Secretary,
Interstate Commerce Commission, Washington, D.C.

MY DEAR MR. MOSELEY :

While in St. Louis the early part of last week, I had quite a lengthy interview with Grand Chief Arthur of the B. of L. E. in regard to united action on the part of the executive officers of each of the railway organizations in conjunction with yourself and such others as may be friendly to us in bringing about national legislation for the purpose of compelling arbitration of all railway disputes. I find that Mr. Arthur is in hearty sympathy with the movement, as are all the other grand officers with whom I have talked.

I write you to get an opinion from you as to the propriety of a meeting in Washington as soon as it is possible for us to convene there, for the purpose of agreeing upon a bill, which will, in the judgment of the majority of the parties interested, meet the requirements, and for the purpose of bringing about such influence upon representatives and senators as possible for the enactment of the measure.

We look upon you as the principal engineer in this movement. Your utterances on the question of arbitration and your suggestions are very valuable to us all, and we therefore submit this proposition to you and if in your judgment it will be wise for us to hold a meeting there, I will arrange with the grand officers at our next meeting in St. Paul to have a date fixed when we shall all be present in Washington and with you go over the matter very carefully and decide upon a course of action to be carried out during the winter months while Congress is in session.

Awaiting your reply, I remain

Yours sincerely,
F. P. SARGENT.

In the course of the session of Congress that followed, the great railroad strike of 1894 — the so-called Debs Strike — realized the fears Mr. Moseley had expressed, and forced upon public attention the problem of securing peace with justice on the national highways. Court injunction and the bayonet were found to be the only means at hand for reopening those highways, closed by a widespread strike in the Midwest and the Northwest. As Mr. Moseley had pointed out in his argument for an arbitration law, "the fundamental cause of the trouble . . . was not and could not have been considered by the courts with a view to settlement."

The law took no account of the grievance of the strikers; the government could only act as a strike breaker, and leave whatever injustice there was in the situation to rankle, uncured and unconsidered. A system of wholesale blacklisting of strikers and union men was adopted by certain railroads against the defeated and helpless members of labor organizations.

Meanwhile, the country was distracted by the hard times through which it was groping, and the arbitration bill that Mr. Moseley presented to Congress, under the privilege of a friendly member, was not taken up. Nevertheless, he persisted in his agitation. He went to Attorney-General Olney, who had incurred the censure of labor men by counseling in President Cleveland's cabinet the vigorous measures adopted against the Debs Strike, and brought to his attention the other side of the question. He asked Mr. Olney to give him the privilege of introducing some of the personal elements in that other side, and

he induced representatives of the workingmen to go with him to see the official whom they had come to regard as their able and unrelenting foe.

It was always Mr. Moseley's simple faith that men needed only to know in order to understand one another. His faith was justified in this instance. Mr. Olney's interest was awakened, and the labor men found him ready to discuss matters in a spirit of fairness.

When, therefore, the Reading Railroad management revived an old rule against the employment of members of labor unions, Mr. Moseley asked the union officials to come to Washington and see the attorney-general. The Reading road was in the hands of receivers appointed by the United States court and under some degree of responsibility to the law department of the government.

Mr. Olney listened to his callers and was convinced that their organizations were wrongfully treated. He brought the question before the receivers, but they refused to rescind the discriminatory order. By his advice a union official sued for an injunction, but not being an actual employee and only a representative of the employees, the court dismissed his bill.

Any employee daring to challenge the rule would, of course, be discharged from employment; but three employees came forward and offered to sacrifice themselves. The case was brought in their names, and they were summarily discharged; but the workmen had the satisfaction of seeing the attorney-general of the United States come to their assistance and file a statement in their behalf as "*amicus curiae*." Nevertheless, the court

decided adversely to the unions and the attorney-general, and the discrimination was permitted to continue.

Mr. Moseley next interested Mr. Olney in arbitration, and the attorney-general drafted much of the bill which, under Mr. Moseley's championship before committees and in the lobby of Congress, became a law on June 1, 1898. Some of the obstacles which had to be overcome in securing the passage of the law are disclosed by Mr. Moseley in a letter to a friend, under date of November 8, 1897:—

The Arbitration Bill was introduced in both House and Senate during the extra session of Congress, but no action was taken in either branch; in fact, in the House of Representatives, there were no committees appointed, as you are aware, therefore, there has been nothing as yet done. I will try and send you the bill to-day.

The one that I send has met the approval of the Federation of Railway Employees, but Mr. Gompers and Mr. Forsyth, who represents the Seamen's Union, and is connected with the American Federation of Labor, oppose any legislation. It seems to me a sort of "dog-in-the-manager" attitude to take, for, in deference to the Seamen, we have carefully excluded them from the operation of the bill, and I believe that Mr. Gompers could trust the leaders of the Railway Associations. . . .

I am doing my best. It is unnecessary for me to tell you that. In the last Congress you will see the fate of the Arbitration Bill. It passed the House. The railway organizations, through me, had an interview with Mr. Reed; it resulted in its passage; but Mr. Calvin Brice soaked it in the Senate. I send you a memorandum which will show you how it went on. Those people up there in the Senate know very well how to kill a thing without apparently antagonizing it.

I have always believed that Mr. Olney's proposed amendment to the bill which, in fact, he drew at our instance, and simply because we wanted to be fair to the

railroads as well as to the men, should have gone in the bill, and I think events are proving it.

When the community is really threatened with famine or widespread disaster, the President should have the power to invoke the aid of the courts, as he now possesses the power of using the military and only to the same extent, for he never will dare to do so unless it is in answer to public opinion, no matter who the President is; but when it comes that private individuals or corporations get the courts to throw their influence against the laboring man, it becomes an outrage which sooner or later will result in revolution.

Now I am not writing you as an official of the government. I am writing you as a friend, and as a plain American citizen, who is in a position to see the holes in the ladder. I do not want to be wrong, and I am largely influenced in what I ultimately conclude to be right by you.

This law is known as the Erdman act, but as his rightful trophies, Mr. Moseley received and treasured the pens with which Speaker Reed and President McKinley signed the bill. The representative in Washington of five railroad brotherhoods, Mr. W. F. Hynes, in an interview on the enactment of the law, said:—

Among the many disinterested persons who have from pure and unselfish motives assisted us in the passage of this measure, the foremost, the ablest, and the most untiring in his efforts, was our sincere and philanthropic friend, the Honorable E. A. Moseley, whose labors are appreciated by organized railway labor all over the United States.

Mr. Olney, meanwhile, had retired from public office, but he retained his active interest in the measure, and when its passage was assured, he wrote to Mr. Moseley: "The bill as a whole is a better bill than I expected you

would be able to get through and I congratulate you heartily on your achievement."

One section as drafted by Mr. Olney, but omitted from the law, is highly interesting since it provided that when the public interests were threatened with irreparable damage, the government could step in and, through the courts, take the roads from their managers, and operate them in the public interest until such time as the strike or dispute was settled; and he also added a proviso that the use of the courts should not be allowed to the private individual in such disputes, but that action should be taken only by the President of the United States. In other words, the executive could employ the peaceful method of the court, as he now under similar circumstances uses the military forces of the country.

The act as it stands is more than an arbitration law. Carroll D. Wright, then commissioner of labor, described it as "practically a bill of rights for labor." To meet the situation presented in the Reading case, Mr. Moseley incorporated a provision to the effect that when a railroad is in the hands of receivers, the representatives of the employees shall have the right to be heard in court upon conditions of employment, and no reduction in wages may be made by a receiver without due notice by authority of the court.

Much to his disappointment, one other feature of the law in which he was deeply interested was declared to be unconstitutional. Many railroad men engaged in the Strike of 1894 had been unable to obtain permanent employment again. It was said that when these men went

to railroad officials and asked for certificates of good character, if they received any recommendations they were of a kind that prevented rather than aided them to get places. By the method of writing the certificate or by use of certain water marks or other tricky means, the paper amounted to a notice that the person presenting it was on the black list.

To meet that kind of persecution, Mr. Moseley himself devised section ten of the Arbitration Law, providing a penalty for threatening or discriminating against any employee because of membership in a labor organization. After a prolonged contest over it, the provision was declared invalid by the Supreme Court in its decision in the Adair case, as being in conflict with the Constitution. Mr. Moseley felt that the court had overlooked the peculiar circumstances of a railroad man's employment and all the semipublic responsibilities attaching to it. In reviewing the decision, he said : —

As I understand it, the whole scheme of the Arbitration Law was for two purposes, first, to avoid strife upon lines of carriers engaged in interstate commerce, and, second, to find a peaceable means of settling difficulties when they arose. That the law has resulted in great advantage to the public is evidenced by the fact that since its passage there never has been a strike upon any railroad engaged in interstate commerce, in which the public interests were threatened ; in fact, I may say there have been no strikes.

Congress yearly appropriates \$10,000 to put the machinery of this law in motion, if necessary. One of the greatest causes of strikes and dissatisfaction was the discrimination against members of labor unions, and if Congress has power to deal with the question at all, it certainly seems to me it has power to pass such measures as

are deemed advisable and essential to prevent strikes, lock-outs, and such dissatisfaction as will cause suffering to the public by reason of failure to have themselves and their property transported.

The unrest among our people seems to be increasing, and if the national government is found impotent to deal with the questions which are going to arise, every man who urges that this and similar legislation is unconstitutional and thereby denies federal authority, will himself ultimately suffer by the disorganization which will result.

Some very learned members of the bar shared his disappointment, and to one of the most eminent he wrote:—

I send you an opinion of the court in the so-called Adair case. While I bow to that great forum of all knowledge, I am too obtuse to follow the subtle and alleged reasoning of the majority of the court. If strikes on railroads have got nothing to do with interstate commerce, what has? How about the Lennon case? I fear the court has not got that touch upon the public pulse which is necessary for them to realize the true conditions in this respect.

It was only within a month that Mr. Mellen, with great gravity, informed the Interstate Commerce Commission that if the New York, New Haven and Hartford Road should stop running for six days New England would starve. His statement is true if all the roads running in to New England were tied up. Anyway, it is in the power of the railroad employee to cause untold suffering and distress.

I had supposed that when a person engaged in a semi-public employment, like that of the railroad, there was an obligation upon him to continue his work, and that he could not instantly leave his job—that he owed a duty to the public that even transcended his own special whims and desires; but the court has thrown all this over.

The men will read it and understand that they may leave their train between stations and leave the passengers to suffer from hunger and cold. The train dispatcher, who carries in his head the trains over a long line of single

track, may leave his key and it is perfectly proper, and he has the endorsement of the Supreme Court in doing so, and yet in the Lennon case a man was put in jail because he refused to haul his train in violation of the order of the court. It is in my humble opinion going to have a bad result, as an encouragement to liberty of action which will result in license.

The benign influence of the Arbitration Law, as a whole, is incalculable. In the first place it is an assertion of the public interest in the unobstructed operation of the railroads, and in the next place it is an ever present means of harmonizing differences between conflicting interests.

The vital provision is that whenever a controversy arises concerning wages, hours of labor, or conditions of employment between a carrier and its employees, seriously interrupting or threatening to interrupt the business of the carrier, a member of the Court of Commerce or of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition put themselves in communication with both parties and shall use their best efforts of mediation and conciliation amicably to settle the dispute; and if such efforts shall be unsuccessful, shall at once endeavor to bring about the arbitration of the controversy in accordance with the provisions of the act.

It is more than remarkable and even borders upon the marvelous, that since 1906 the offer of mediation by the able and discreet representatives of the government under the act, Judge Martin A. Knapp and Commissioner Charles P. Neill, has not been definitely rejected in any case

of consequence in which a strike was seriously threatened. They have often been engaged in accordance with the terms of the law, and in all that period have not had to report a single failure to produce an amicable settlement of any important controversy. The law has thus prevented what might have been irreparable loss and injury to the country.

Difficulties have been repeatedly and quietly settled under the terms of this beneficent statute. There are notable instances, which show the practical benefit of the legislation and which are known to the public. Differences arose between several railroads west of the Mississippi and their employees in the summer of 1906, which threatened to tie up all the great transportation lines of that section. With the consent of both sides, the official mediators succeeded, not in laying down rules for the guidance of the parties to the dispute, but in getting the parties themselves to agree by compromise upon conditions which were found satisfactory.

Another important instance of the same kind occurred during the spring of 1908. All the roads south of the Ohio and east of the Mississippi had posted notice of a cut in wages effective thirty days later, and similar action had been taken by several lines in the Northwest. Although conferences between employers and employees continued for a considerable time, the employees were unable to obtain a withdrawal of the notice of reduction. President Roosevelt, therefore, addressed a letter to the Interstate Commerce Commission, asking it to determine the financial condition of the roads which had posted

the notices in order that the public might know whether the proposed cut was necessary or justifiable.

Following that action by the President, the railroad companies suspended the notices and submitted the matter to the official mediators. As the result of a series of conferences, participated in by the representatives of the employees, the reduction in wages both in the Northwest and in the South were indefinitely postponed.

More recently, the act was put to the test, in 1912, in a case involving the interests of the entire country. In this instance, the locomotive engineers had presented a schedule which the railroads rejected. The newspapers were filled with pessimistic news of a great impending strike, which threatened to paralyze the commerce of the nation. Neither side would admit that there was room for compromise, and each refused to invoke the Arbitration Act. Nevertheless Judge Knapp and Commissioner Neill, the government mediators, took up the case informally, and this manifestation of their interest in a peaceable settlement served to center public opinion on the side of peace. The railroads and the engineers felt the force of that opinion, and resuming the negotiations which had been abandoned in despair, they agreed upon a plan of arbitration. A still later case is that of the firemen, whose differences with some fifty railroad companies gravely threatened all the country east of the Mississippi in 1913, but which after prolonged negotiations were submitted to arbitration under the provisions of the act.

The law applies only to those classes of employees

actually engaged in train operation, and since 1906 there has been no serious strike among them. The latest official report, prepared by Commissioner Neill, presents this astonishing record of five years :—

The controversies which have been brought before the mediators have ranged in importance all the way from a few instances of small roads, involving less than 100 miles of line and fewer than 100 employees, up to cases of exceptional magnitude, embracing over 50 roads and involving more than 100,000 miles of line and over 40,000 employees in a single controversy. In one year, 1910, the assistance of the mediators under the act was called for in sixteen cases, these cases involving nearly 300,000 miles of railroad and directly involving nearly 80,000 railway men. The total mileage involved in the forty-eight cases in which the provisions of the law have been invoked is over 500,000 and the total number of employees directly involved is over 160,000.

There is no more successful act than this on the statute books of the United States.

CHAPTER XVII

THE RAILROAD BROTHERHOODS

ALTHOUGH, when Mr. Moseley started the national movement for greater safety of life among toilers and travelers on railroads, there was not a line of congressional legislation in their behalf, it was his happy fortune to live to see in operation an elaborate code of Federal acts covering nearly every phase of the subject.

The Safety Appliance Statute of 1893 was the pioneer and parent of all these useful laws. In promoting the passage and enforcement of that Act, Mr. Moseley blazed the way for the legislation that has followed. It was the first assertion of the interest and authority of the Federal Government in and over the conditions of labor and the instrumentalities of transportation on interstate railroads. The long and brilliantly successful campaign which Mr. Moseley led in the establishment of that Act was, in effect, a campaign of education for the enlightenment of Congress and the courts, the railroads and their employees and the general public as to the powers and duties of the National Government in an entirely new field.

When he began, he had to convince even the officers of the railway unions that congressional legislation in behalf

of the men was possible and worth striving for. The brotherhoods of employees had no permanent representation in Washington until after the passage of the Safety Appliance Act, although they had sent a former railroad commissioner of Iowa, Mr. L. S. Coffin, to represent them temporarily, and he coöperated with Mr. Moseley.

As late as 1894, Mr. Moseley was urging upon the brotherhood leaders the necessity of having "a good man here to push things." "It will be necessary to be constantly represented here for the next month or six weeks at least, and I think it would be economical to employ a resident attorney." "I can," he added, "see him every day, every hour if need be, and consult and advise with him freely as to every step taken." He was at that particular time hoping to see Congress modify the injunction process in labor disputes, and that marked the beginning of the practice, in operation ever since, of having representatives of the brotherhoods in Washington to look after their interests in Congress and before the Interstate Commerce Commission.

A new and important influence was thus introduced, on Mr. Moseley's motion, at the capital and in national politics, an element which now makes itself felt in the halls and committee rooms of Congress, in the White House, in national party conventions, and in national political campaigns. The total number of railroad employees not being far from a million and three quarters, largely voters, and at least a third of them in the brotherhoods, it safely may be said that there is hardly another single interest in the country with equal voting strength.

Combined, they alone might turn a presidential election. As this new factor became active and put forth its efforts, leaders in Congress displayed an increasing intelligence and sympathy on the subject of railway labor legislation.

When Mr. Roosevelt suddenly came to the Presidency, after an era of extreme conservatism under Presidents Cleveland and McKinley, he showed a readiness to take up such questions and throw the influence of the administration in favor of advanced measures, which had received no countenance from his predecessors. Mr. Roosevelt had not been in the White House a month, when Mr. Moseley wrote to the late Chief Arthur of the Brotherhood of Locomotive Engineers:—

I have not heard from you for some time, and wish you could come down here and see me. I have been over to see our new President several times since he has been President, and I believe you will find him very much interested in anything which will promote the welfare of the railroad employees. I think it would be a wise thing for the heads of the railway labor organizations to come here and call upon him and I am sure they will receive a cordial reception. I have known him for twenty years, and if you will come down I shall be glad to go over with you.

I think the Safety Appliance Law is working out well. With a few exceptions among the railway officials, I think all are now working to a common end, and that is the highest state of efficiency in safety appliance equipment attainable. I was gratified a few days ago to hear one of the leading railway attorneys of the country say that the benefits of the law had been forcibly brought to his attention by the fact of the greatly reduced number of suits against his company on account of accidents to employees. He said it is astounding, the great reduction which has taken place in these claims.

Afterward, in an address before a convention of firemen, Mr. Moseley made this comment on the surprise and criticism that had been occasioned by the appearance of labor representatives at the White House:—

We hear of the great banker, the railroad magnate, the man who has acquired immense wealth in commercial pursuits, being entertained at the White House; and the opinions of such men on affairs of state and fiscal affairs of the nation are given the greatest weight. Is it a crime for the President to confer with other men, who have their individual stake in the body politic?

There has been altogether too little conference with the hosts of labor in the past. It has been only the bankers and business magnates whose opinions were considered of any account in the councils of the nation. But there are workingmen who are as capable and conservative advisers as these; their interests in the nation are fully as important as the interests of the bankers, and they represent the men who go to make up the majority of our people. . . .

Your everyday contracts are being kept sacred by you, although many of them bear heavily upon the men; but you believe that when a contract is entered into it must be observed until it expires. . . . There is nothing but venom and injustice in this attack, and no man should be punished simply for being a member of your organization, for showing a consideration for labor, or for not inviting the counsel of its representatives, even though he be the president of the United States.

Mr. Moseley not only brought the leaders of the railroad brotherhoods in contact with the new President but with the successive Attorney-Generals of the Roosevelt administration as well. He no longer stood alone in official Washington, as he had for ten or a dozen years, and no longer worked under cover in order to avoid the fatal antagonism of men in high places. His one time

hobby, — "Moseley's hobby," — tolerated when it was not scorned among practical politicians, became the fashion at the capital, where formerly he took his official head in his hand every time he appeared at the Capitol.

From forwarding a friendless cause, he now found his leadership challenged by ambitious converts and new recruits. This rivalry, however, troubled him not at all. On the contrary, he rather welcomed and encouraged it, as he adroitly turned it to account, while continuing to pursue his policy of self-effacement. A close observer gives this description of the man and his methods:—

Unlike the average politician, Mr. Moseley did not employ band wagon methods in his work. He was always seeking results, and when he set out to accomplish a certain object, he seemed to lose sight entirely of the personal element, and give no thought to the question of credit to himself. In that respect he was the most unselfish individual I have ever known. As long as his object was accomplished he cared nothing whatever about where the credit was given, and while he certainly appreciated commendation (as every human being does), he was always ready to have it publicly believed that the credit for his work was due to one of his instruments rather than to himself.

While his earnest efforts to secure justice for the workers brought upon him the suspicions and attacks of some of the more prejudiced representatives of the railroad corporations, most of the railroad managers and lawyers with whom he dealt came to rely upon his fairness toward all interests. The following letter from one of the foremost railroad lawyers is expressive of this view:—

CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD,
LEGAL DEPARTMENT.

CHICAGO, Nov. 21, 1897.

DEAR MR. MOSELEY :

I reached here last night after a stay of a few days in New York and Philadelphia. On the way, I read with great interest your Boston address before the railway trainmen.

If everybody would take as sensible a view of labor unions as you do in your speech, no reasonable man would object. I was much interested in the statistics you incorporated in your remarks, and in the splendid advice you gave the members of the organization. I think we may safely conclude that labor organizations have come to stay, and that the duty of all who have anything to do with the administration of railway property is to endeavor to guide the organization in the right way, and that is exactly what you are doing, and it is a good work. . . .

Yours very truly,

GEO. R. PECK.

Mr. Moseley kept at all times in close touch with the movements of the brotherhoods, and was a safe adviser in many of the grave emergencies confronting the organizations. Whenever they felt they were in any manner abused or deprived of their rights, by legislation adverse to their interests, or by judicial decisions believed to be unfair to them, he was almost the first man in the country to whom an appeal was made for advice in their efforts to secure what they deemed to be their rights.

He had, however, his differences with them, for he always held himself the servant of the whole public rather than of any one interest, and he worked with them to no small and narrow purpose. Occasions arose when he exerted himself to moderate their policies, and more

than once he found himself in open opposition to their plans.

In short, he was as independent of them as of the railroad companies, having nothing to ask of them for himself and they nothing to give him, although at times his zeal for their welfare caused a few of their representatives to act as if they were doing him a personal favor in coöperating with him.

Mr. W. F. Hynes, who represented the five principal brotherhoods in Washington in 1896, writes of Mr. Moseley and his relations with the brotherhoods: "He had urged upon the organizations with such force the necessity of such legislation on this (safety appliances) and kindred subjects that they finally took a determined position to secure such laws, and strangely enough he was opposed, in some instances, by the very men whom he sought to relieve."

Generally it was only the inevitable friction between the organizations, jealousy of one organization toward another, or of one leader toward another, which, from time to time, embarrassed him in his efforts to serve all and to promote the good of humanity. Of the American Federation of Labor he wrote in 1900, "There is nothing regarding the Interstate Commerce Commission which they have not done all they could to prevent. . . . The American Federation of Labor wanted to kill our arbitration bill."

One letter written by Mr. Moseley in 1908 to the Brotherhood of Railroad Trainmen, in acknowledgment of commendatory resolutions, is expressive of his friendly and helpful relations with the organizations:—

June 23, 1905.

MR. A. E. KING, Grand Secretary Brotherhood of Railroad Trainmen, Cleveland, Ohio.

DEAR SIR AND BROTHER :

Copies of resolution sent me under date of the 15th instant have been received, and I take the first opportunity to acknowledge them, and express my sincere and heartfelt thanks to the members of the convention for the resolution concerning myself.

I appreciate this evidence of good feeling on the part of the trainmen more than words can express. It is a pleasure to me to know that my efforts to better the conditions of labor of railroad employees have borne some fruit, and it is doubly pleasant to receive such hearty commendation from the trainmen as is evidenced by this resolution.

We have traveled a long and difficult road, and there have been times when it seemed as though the battle would surely go against us, but the cause was too good to be finally defeated, and in line with the progress of humanitarian instincts and a higher type of civilization, we have triumphed to the extent that the principle of government control and regulation of the conditions of railroad labor is now so firmly established that it can never more be defeated. It is now too late for any backward step, and as it is against all nature for things to remain stationary it is absolutely certain that we must go forward.

There is no longer any question about the matter of safety appliances. . . . The next forward step is to protect and conserve the rights and interests of the injured employee and of the widows and orphans of those who go down to death. This can only be done by statute, along the lines suggested in my public address at Buffalo. There is no greater question than this that could occupy the attention of the trainmen to-day.

Again expressing my heartfelt thanks for the action of your convention, and with kind personal regards to yourself and Brother Morrissey, I am,


Fraternally yours,

EDWARD A. MOSELEY.

Notwithstanding occasional and only momentary disagreements, it is remarkable how long and well Mr. Moseley and the brotherhoods worked together, and it is equally creditable to their loyalty and to his good faith. Without flattery, it may be said that the members of the brotherhoods are of the very highest type of American labor. There is perhaps no other great group of workmen in this country which quite equals the conductors and engineers, firemen, brakemen, telegraphers, switchmen, roundhouse men and all having to do with the movement of trains, in intelligence, zeal, sobriety and the various qualities that make good American citizens. This is necessarily so from the nature of their calling, where every man, from the highest to the lowest grade, is responsible for the safety of human life. Their responsibility is outlined by Kipling in this stanza:—

It is their care in all the ages,
To take the buffet and cushion the shock;
It is their care that the gear engages;
It is their care that the switches lock;
It is their care that the wheels run truly;
It is their care to embark and entrain;
Tally, transport, and deliver duly,
The sons of Mary by land and main.

Naturally the superior character of the rank and file of railroad men is reflected in the men who rise to leadership among them, and the chiefs and other officials of the brotherhoods have long enjoyed the respect and confidence of the country. These were Mr. Moseley's coworkers for a quarter of a century, and some of them were more — they were his friends.



He was a strong believer in the incorporation of labor unions, and he wrote into the Arbitration Bill a section designed to encourage that policy. In a letter to one of the most prominent labor leaders, in 1908, he said : —

Ever since the decision in the Hatters' case, I have been greatly troubled by thoughts of the consequences of the action of the Supreme Court, and have cast about for means of finding to some extent, at least, a measure of relief.

It would appear that it is unsafe since this decision for any man of property to be a member of a labor organization, because he is liable to the extent of his financial ability for the acts of any member of the organization. Again, the organizations have their sick benefits, their death benefits, and also their out-of-door or relief funds, all of which are liable at any time to be seized upon.

I am aware how disinclined organized labor is to incorporate and the reasons which may be controlling why they should not incorporate, but it does seem to me that the national incorporation act affords a measure of relief for the situation which now confronts them. Incorporated, no member is liable for the acts of the organization; neither is the organization liable for the acts of any of its members. Mr. Harriman and Mr. Morgan no doubt belong to hundreds of corporations, but these corporations can do anything they see fit, and Harriman and Morgan are not liable. Why can't labor take a lesson from the capitalists and protect themselves in the same way? . . .

I have therefore drawn a bill, which I have shown to no living person and no one but myself knows anything about. If it is of any use to you, I beg of you to use it as your own. My only desire in the matter is to have labor protected. We can never get through such laws as they have in Great Britain to protect labor, because our Supreme Court stands as a barrier, and a decision of any five of the judges can at any time overthrow an act of Congress.

When the constitutionality of the section of the Arbitration Bill which Mr. Moseley wrote for the purpose of preventing the discharge or blacklisting of railroad workmen because of their membership in a union was assailed in the now well-known Adair case, he secured the intervention of the Government in the defense of its validity and aided the department of justice in preparing the brief. He fortified himself with the opinion of a most eminent lawyer, a former Attorney-General, who advised him that "human beings are among the instrumentalities of Interstate Commerce as much as cars, locomotives, automatic brakes and other inanimate things. The character and qualifications of the persons engaged in such commerce are most important, both as regards its efficient conduct and as regards the safety of travelers. In the non-discriminatory rule under consideration, Congress must be held to have had precisely those considerations in mind. It must be taken to have thought that national carriers could not exclude from employment union laborers without detriment to the service — without barring out a class of employees who might be and probably would be among the best fitted for the work to be done."

While the Adair case was on, the following letter was written, under date of November 13, 1906, to a correspondent of the *Chicago Tribune* by a high official of the Government, outside the Interstate Commerce Commission : —

I have been reading your excellent letter in Monday's *Tribune* — all of your letters are excellent — and I note that you give me the credit for having brought to the

attention of the Attorney-General, the Louisville and Nashville case in which the Attorney-General intervened.

This was good of you, and I appreciate it very much. I know that you always want to do the right thing by the right man, but in this case you have done the right thing by the wrong man. The entire credit for this excellent piece of work is due to my worthy friend, the Secretary of the Interstate Commerce Commission, Honorable Edward A. Moseley, who was fighting the stormy and thankless battle of the wageworker before you and I were born, and who, although his hair is getting both gray and scant on the forward part of his head, and who, although he is laying on the adipose tissue that comes with advancing years, is still fighting the good fight as energetically, as intelligently, and successfully as ever.

No man in the United States has done more in the interest of the man who works with his hands than Moseley. This is simply one of his many successful jobs, and I would not wish for a moment to get the credit for it. If I had known of it, I would have done just what Moseley did, but the difficulty is that one must get up very early to do more in this cause than Moseley. He has no relation whatever with a man who brings crowds from England over here, and, although I suspect his bank account entitles him to rank amongst the plutocracy, his mind and his heart, together with all the parts of his anatomy, are with the common people like ourselves.

Greatly to Mr. Moseley's disappointment, the Supreme Court declared the section void as in conflict with the Constitution. He thrived on disappointment, however, and what would have been discouragements to other natures only gave him added zest for the strife. "I am the same old two and six pence," he wrote a friend in a foreign country, "plugging along, fighting the battles as well as I can for the fellow that wears a blouse and lugs a dinner pail."

CHAPTER XVIII

HEROES IN OVERALLS

IN his arguments for protective legislation for railroad workers, Mr. Moseley was in the habit of comparing the hazards of their calling with the perils of sailors, which had been made more real to the public imagination by the classics of literature, and which he himself had faced in his youth.

As early as 1894, in a speech delivered at the convention of the Brotherhood of Railroad Firemen at Harrisburg, on September 10 of that year, he said : —

Our Girards, our Coopers, our Astors, and some few of our other millionaires, beneficiaries of honest toilers' labor, have given of their wealth for the cause of humanity and to aid human advancement. The nation honors them, and from one end of the world to the other their praises are sung and echoed down the ages, while their deeds are engraved upon monumental marble and granite. But Bill Smith or Tom Jones — the man who gives his life, worth more to him than all the millions in the world — freely offers it in the cause of humanity — the man who stands at his post while the flames slowly roast him to death, stands there because the lives of others depend upon him — is a hero whose sacrifice is a thousand times greater than that of all the men who give mere money. Still he generally fills an unremembered grave, and leaves no memory of his noble acts behind him, save in the hearts of his sympathetic fellow-workers and kindred souls that appreciate true heroism in whatever sphere exhibited.

Within the last few days we have read of destructive forest fires throughout several of the great western states. A train was sent down the line of the road. It ran quickly into the timber lands; great clouds of smoke enveloped it; flames licked their way to the roadbed; but the little band of rescuers rode on — into the yawning, devouring furnace — not for money, but for love of their fellow-men. They went to save, and nobly did they do the work! Ever and anon the train stopped to take on board some fainting woman with a babe clutched to her breast; some men made mad by the awful race with fire — on, on they went, never faltering; and at last with wheels welded to axles, with the woodwork of the cars aflame and charred, with the engine cab entirely burned away, that train reached safety — that train manned by kings — American railway men — heroes every one, and their deed has forced the admiration of the civilized world.

That engineer has made the name of Root immortal, but who was that other on that cabless engine, that man who fought fire with fire, who hurled fuel to the hungry furnace flames that fire might save from fire, sobbing, gasping, not through fear, but from the agony of living death, never deserting his post, leaping now and again into the water tank to extinguish the fire from his body, or to dash water on the engineer — who was this who shoveled coal while burning death was creeping o'er him inch by inch, happy that his life could be given in exchange for the lives of suffering women and innocent children? We know the engineer's name. Tell us, who can, the name of this fireman? Let it be enshrined in the hearts of his countrymen and enrolled with the names of the world's greatest heroes.

Take up the daily papers any day and you will find evidences of heroism, bravery, and self-sacrifice on the part of those employed on or about the railroads of our country. The Congress of the United States freely gives of the people's money over a million dollars a year to support the life-saving stations upon our coasts. On those of her citizens who, by self-sacrifice, risk, bravery, daring upon the sea merit it, the country bestows her medals, signifying her appreciation of gallant deeds. And worthy is the

object. But why limit this to the sea? Should not those who have been equally true upon land receive some mark of appreciation of their country? To secure the Cross of the Legion of Honor is the fond dream of every true Frenchman's heart. Let us have our company of heroes.

In Mr. Moseley's ceaseless agitation for measures to meet more urgent and practical needs, this sentimental suggestion was neglected for several years, but it was not forgotten. At last he gave the idea form in a bill which he drafted and which was introduced in Congress. At a hearing before the Senate committee on interstate commerce in February, 1905, he appeared and made an interesting and feeling argument in its support.

He pointed out, that in 1876, Congress had made provision for bestowing medals upon men who endangered their lives in endeavoring to save lives at sea, and he asked support for the bill providing medals for those "saving or endeavoring to save lives from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disaster, or grave accident upon any railroad within the United States engaged in interstate commerce." He told again the story of Root, the brave engineer of the relief train in the Wisconsin forest fire, and he told other stories of daring on the rail:—

Was greater courage ever manifested, than that of the locomotive engineer, Joseph Lutz? A flue burst, filling his cab with scalding white-hot steam, while his express train was at full speed. He did not jump; he stuck to his post, while the flesh was cooked, and peeled from his hands and face and body! He stopped his train and saved his passengers, but he is crippled for life. . . .

Who remembers the heroic deed of the humble switch-

man, Timothy Quinlan, who gave up his life on February 27, 1904, in saving the Lake Shore Limited and its cargo of human freight from destruction? The train was bearing down upon an open switch at lightning speed; an awful catastrophe seemed inevitable; Quinlan saw the danger, and while there was not one chance in a thousand that he would be able to avert the impending catastrophe without sacrificing his own life, he hesitated not an instant. He reached the open switch, and threw it, fairly under the pilot of the onrushing engine.

The train with its precious human cargo rushed on in safety, but what of brave Timothy Quinlan! The momentum of the train was so great that it picked up his body and fairly threw it on an adjoining track directly in front of a moving engine, and in an instant all that remained of brave Timothy Quinlan was a mangled, bleeding mass of human flesh and bones.

Among the railroad employees examples of heroism of the highest type are of almost daily occurrence and might be multiplied indefinitely. That there is need for some such measure as this bill proposes will be almost universally conceded. Mr. Carnegie has recently established a hero fund to cover cases of individual heroism, and his action is commendable in the highest degree. It does not, however, seem appropriate that cases of conspicuous bravery in a distinctly public service should be left to be rewarded by private parties. There ought to be some public recognition and public record of these matters, such as this bill proposes.

In his last message to Congress, the President recommended such legislation in the following language: "The Government has recognized heroism upon the water, and bestows medals of honor upon those persons who by extreme and heroic daring have endangered their lives in saving or endeavoring to save lives from the perils of the sea in the waters over which the United States has jurisdiction, or upon an American vessel. This recognition should be extended to cover cases of conspicuous bravery and self-sacrifice in the saving of life in private employments under the jurisdiction of the United States, and particularly in the land commerce of the nation."

I am not here to represent any particular person or interest, but I have made a study of this subject for nearly twenty years, and as the President has called attention to it, the time now seems opportune to ask for this legislation. I want to say that I have had some experience in these matters, for when a boy of sixteen I had already crossed the Equator four times in the forecastle of an East Indiaman, and, having been reared upon the seacoast, I know something about the perils of the deep, and have experienced that sentiment of awe with which most persons contemplate the vastness and power of the sea.

I have, therefore, no desire to detract in any manner from the brave deeds of those who have distinguished themselves upon the water, but there are other brave men daily performing acts of self-sacrificing heroism all over our country — men who are as worthy as our heroes of the sea, but who are debarred from receiving public recognition of deeds of the most sublime heroism. It seems to me that public recognition of such matters should not be confined to those who have won the title of hero upon the waters over which the United States has jurisdiction or upon the battle field. The Government should be willing to give its medals also to those who have distinguished themselves in the land commerce of the nation. The spirit in which I advocate this measure is well expressed by Mr. Cy Warman, the railroad poet and writer, in the following verses :—

Now that we've scattered the flowers of May
Over the graves of the blue and the gray —
Over the graves where the women weep,
Over the mounds where the heroes sleep —
Now, let us turn to the graves of those
Who have lived and died in their overclothes.

Are they not heroes? Have they not died
Under their engines, side by side?
Have they not stood by the throttle and brake
And gone down to death for their passengers' sake?
Calm, undisturbed is the peaceful repose
Of the men who have died in their overclothes.

We would not take from the soldier's grave
Not even the blades of grass that wave,

Nor would we ask you to hand us down
A single star from the soldier's crown;
All honor to them; but forget not those
Who have lived and died in their overclothes.

We would take nothing from the heroes the nation already honors. We would simply ask that other heroes who are equally worthy be also honored. A measure such as this should call forth a hearty response, and I respectfully urge upon the committee the favorable consideration of this bill.

In promoting the passage of the Medal Bill, Mr. Moseley ordered from one of the journals of the railroad brotherhoods a number of copies of an article narrating a brave deed, and this transaction led to the following correspondence:—

OFFICE OF GRAND LODGE, SWITCHMEN'S UNION OF
NORTH AMERICA,
326 Mooney Bldg., Buffalo, N.Y.,
March 6, 1905.

EDWARD A. MOSELEY, ESQ.,
Secretary, Interstate Commerce Commission,
Washington, D.C.

DEAR SIR AND BROTHER:

On my return from the west recently, I learned that you had requested copies of the letter published in our *Journal* for Hon. T. V. Powderly, relative to a hero who was a member of this union and who sacrificed his life for the sake of humanity at Cleveland, Ohio, and that while there was some expense incurred in connection with the publication of the articles and it being forwarded to you, our editor, Mr. Cassidy, sent with the documents a bill to you for the same.

Let me explain that Mr. Cassidy did not know of the fact that you are annually spending thousands of dollars of your own money for the purpose of protecting the lives of railroad men, and had he known it he would have, instead of sending a bill to you, presented it to the grand

board, which was afterwards done; and by this time you have had, no doubt, the amount remitted to you, which I hope will be satisfactory, and that you will have no unkind feelings towards this union because of the presenting of the bill. Had I been here at the time the request was received, this mistake would not have been made, and I again assure you Mr. Cassidy meant no offense whatever in sending it, as he believed the expense would be borne by the Commission, and not by you individually.

I am, with best wishes for your success,

Fraternally yours,

F. T. HAWLEY,

Grand Master.

March 10, 1905.

MR. F. T. HAWLEY, Grand Master, Switchmen's Union
of North America,
326 Mooney Bldg., Buffalo, N.Y.

DEAR BRO. HAWLEY:

I am more than surprised at your letter. To think for one moment that I had a feeling about the union presenting me a bill for those leaflets of Powderly's tribute to Timothy Quinlan as being other than just and right never entered my head. I was only too glad to have them and looked upon the whole matter as a favor. There was every reason why I should pay for them, and I thought it only natural that the bill should be sent. I wanted the leaflets to distribute among members of Congress.

I send you a copy of the law. The President signed the bill and sent me the pen. I have been advocating such a measure for years and am delighted with the result.

I have just written to Bro. Cassidy asking him if Timothy Quinlan did not leave a mother, wife, or sister who had depended upon him for support. It seems to me that I could make no better use of the check, which was so kindly returned to me, than to send it to his widow or mother or some relative of his. If you can inform me of the proper person, I will write her a nice letter and transmit it and the check through you. Poor man, he met a noble death, and in doing so has called attention in a most

forcible way to the intrepidity, courage and heroism of the class of men represented. I believe his death was not in vain.

With all cordial regards to you and your associates, I am as ever,

Fraternally yours,
EDWARD A. MOSELEY.

The bill having become a law, the following letter notes the next step:—

THE WHITE HOUSE, WASHINGTON,
March 30, 1905.

MY DEAR MR. MOSELEY:

I send you herewith the regulations governing the award of life-saving medals under the provisions of the Act of Congress approved February 23, 1905, together with the pen with which the President signed them.

Very truly yours,

WM. LOEB, JR.

Secretary to the President.

In the regulations, the President directed that applications for medals should be addressed to and filed with the Interstate Commerce Commission. Satisfactory evidence of the facts must be filed in each case in the form of affidavits made by eyewitnesses, of good repute and standing, testifying of their own knowledge. The opinion of witnesses that the person, for whom an award is sought, acted with extreme daring and endangered his life is not sufficient, but the affidavits must set forth the facts in detail and show clearly in what manner and to what extent life was endangered and extreme daring exhibited. The railroad upon which the incident occurred, the date, time of day, condition of weather, the names of

all person present, when practicable, and other pertinent circumstances should be stated.

The affidavits should be made before an officer duly authorized to administer oaths and be accompanied by the certificate of some United States official of the district in which the affiants reside, such as a judge or clerk of United States Court, District Attorney, or Postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken before an officer without an official seal, his official character must be certified by the proper officer of a court of record, under the seal thereof.

At the President's request, Mr. Moseley had a medal designed, the artist being Mr. Adolph Weinman of New York. President Roosevelt continued to take a lively interest in the project, and suggested some changes in the design of the medal and of the button which a medalist is entitled to wear. The following letter properly forms a part of the record of this piece of legislation :—

July 17, 1906.

HON. JAMES R. MANN, M.C.,
Chicago, Illinois.

DEAR MR. MANN :

I have sent you by Adams express a replica of the design for the medal of honor which is to be awarded those who distinguish themselves by exceptional heroism in the saving of life upon railroads, which I wish you to accept with my compliments.

I feel that this small measure of recognition, at least, is due you for the great interest you took in this measure in Congress. You introduced the bill, reported it from the committee on interstate and foreign commerce, and put it through the House. Your report was an earnest and

convincing plea for recognition by the General Government of the heroism of railroad employees, and I feel that the railroad men of the country owe you a debt of gratitude for your untiring efforts in their behalf, to the end that they should receive the same sort of recognition for heroism as the Government has long given to those who exhibit extraordinary bravery on the waters under the jurisdiction of the United States. . . .

With kindest wishes, and trusting that the replica will reach you in good condition, I am,

Sincerely yours,

EDWARD A. MOSELEY.

Mr. Moseley, and the committee of award acting with him, passed favorably on thirteen applications for medals. A brief condensation of the reports on file must suffice to indicate the worthy character of the deeds which, under the law, have found recognition from the nation :—

George Poell, Grand Island, Nebraska, a fireman on a freight train, saw a little child on the track between the rails ; he went out the front window of the cab, along the running board, and down to the step of the pilot on the front end of engine ; he grasped the pilot brace with his right hand and leaned as far forward as possible so as to grasp the child with his left and swing it out of the way when the engine reached it. He accomplished this feat successfully, but in swinging the child out of the way its body struck him with such force as to cause him to lose his footing ; he fell, and his left foot was torn from the leg, both his arms were broken, and his face and body terribly bruised and lacerated. The child was found to be uninjured beyond the shock and a slight bruise. Medal awarded, December 21, 1905.

Charles W. Haight, Utica, New York, a locomotive engineer, discovered a little child between the rails ; he went out on the running board and down to the pilot, but in grasping the child its head struck him on the breast

with considerable force, bearing him backward upon the pilot beam, where he had great difficulty in hanging on with his burden in his arm until the train came to a stop and the brakeman assisted him to the ground. Medal awarded, June 21, 1906.

George H. Williams, Braintree, Massachusetts, an engineer, after bringing his train to a stop at Quincy station, saw a woman and girl running to cross the other track and, realizing that they would not have time to cross ahead of an approaching train, he jumped from his engine and ran toward them with the idea of assisting them, at the same time calling out to warn them of their danger. The girl, being in the lead, and more nimble than her mother, got safely across, but the mother only got on the track, when she was arrested by the gate tender, who pulled her back from the train. At the same instant Williams reached her in his attempt to shove her back, but he did not have time to get entirely across the track before the train reached him. He was struck by the locomotive and thrown a distance of about twenty feet, sustaining severe injuries, which necessitated his removal to the hospital, and he was unable to resume his regular duties until about three months after the accident. Medal awarded, June 21, 1906.

Edward Murray, Pittsburg, freight conductor, was riding on the footboard on the rear end of the tender, as the engine approached a street crossing; two children, aged two and four years, stepped upon the track. The engine was almost upon them. Murray, in utter disregard of his own safety, leaped from the footboard in front of the moving engine, lifted one child clear of the rails, and grasping the other in his arms stepped on the footboard of the engine just in time to escape being run down and crushed beneath the wheels. Medal awarded, October 23, 1906.

In Parsons, Pennsylvania, while on his way to school, a Polish lad about twelve years of age, in walking on the track, caught his foot in a frog; at the same time a passenger train was rapidly approaching. Edgar E. George, a stenographer, managed to reach the boy in advance of

the train, but was unable to release his foot. The train was almost upon him, and it seemed as if nothing could prevent the boy from being mangled to death, but instead of leaving the lad to his fate and looking out for his own safety, George quickly sprang to one side, and with his left arm bore the boy's body down as far as the outer rail would permit and with his right arm forced the imprisoned leg under the cylinder, journal boxes and steps, which scraped their bodies as they came along. The engineer did not succeed in stopping the train until the engine and one coach had passed over Mr. George and the boy, when the boy was found safe in George's arms. Medal awarded, June 8, 1907.

A passenger train arrived at the bridge which spans the Cumberland River at Clarksville, Tennessee. The draw was open at the time, but the engineer failed to stop his train, with the result that the locomotive and the mail and baggage cars plunged into the river. The engineer was killed. Two mail clerks were in the mail cars at the time, and the baggageman was in his car. Although seriously injured, they managed to break their way out and get on top of the cars. . . . The river was at flood stage, with a seven or eight mile current, and full of drift. It was also quite dark at the time of the accident, and the river was in such condition that it was considered unsafe to run the ferry boat, which crosses a short distance below the place where the accident occurred. A number of persons saw the cars floating down the river, and heard the cries of the men for assistance, but none attempted to go to their aid, as all feared to take the risk. Mr. Arms, who lives on the bank of the river, was confined to his bed with malarial fever, but he immediately rose, and without waiting to put on coat, hat, or shoes, made his way as rapidly as possible to the ferry landing. He jumped into a skiff, and appealed to the bystanders for aid, offering ten dollars, all the money he had, to any person who would go with him in the boat. Failing to secure a companion, he shoved off in the boat alone, although one of the persons appealed to, states that "I told him it was madness to go out there, for if the drift don't swamp you, the people on

those cars will jump in and swamp you sure." With cries of encouragement to the imperiled persons, Arms finally reached the cars, and safely landed the men upon the river bank. Had it not been for this heroic action, it cannot be doubted that all three of the men, whose lives were imperiled, would have perished. Application for a medal for Mr. Arms was made by the Postmaster-General, officials of the railway mail service having taken the matter up and procured the necessary affidavits and statements upon which to base an application under the statute. Medal awarded, June 8, 1907.

Edward A. McGrath, Milwaukee, a station agent, is a cripple; a six-year-old girl started to cross the track ahead of a train, apparently not perceiving its approach at the rate of from 15 to 20 miles per hour. McGrath quickly rushed to the rescue of the child. The train was so close that the spectators feared it would be impossible for either to escape destruction. McGrath was struck by the pilot beam of the engine, and his hat was knocked off, but he fortunately escaped injury and succeeded in lifting the little girl from in front of the engine and placing her entirely uninjured out of the zone of danger. Medal awarded, December 3, 1907.

Frank Larson, Fremont, Nebraska, a locomotive fireman, discovered a small boy on the track about 400 feet ahead of the engine; he climbed out the window in the front of the cab, hastened along the running board to the pilot of the engine, reaching the point of danger just in time to catch the child by its clothing and throw it off the track as the train passed over the spot where it had been standing. Medal awarded, April 2, 1908.

Charles Bennett, Waukegan, Illinois, a brakeman on a train which was sidetracked, as a fast passenger train approached, running at a speed of fifty or sixty miles an hour, saw a woman step on the track directly in front of the train, one hundred and fifty feet from where he was standing. When he reached her and caught hold of her with the intention of pulling her from the track, she resisted his effort and endeavored to break away from him,

evidently misunderstanding his intention and having no idea of her dangerous position. Finding that he could not induce the woman to leave the track, he picked her up bodily, when the train was almost upon them, and they rolled together into a fifteen-foot ditch at the side of the track, the train passing so close that Bennett's body was brushed by the pilot beam of the engine. Medal awarded, April 2, 1908.

Robert Brendle, McKeesport, Pennsylvania, a policeman, was on duty at a street crossing when a train came along at a good rate of speed. At the same time, a woman started across the tracks. Brendle attempted to warn her by shouting to her. She was a foreigner; did not speak English and did not seem to understand the warning cries. Brendle ran on to the track, grabbed the woman about the waist, and carried her quickly across. The train was so close to them that the pilot beam of the locomotive brushed the officer's body and the witnesses of the incident turned their heads aside, thinking that both would surely be ground to pieces under the train. Medal awarded, February 28, 1910.

George Karsten, switchman, Milwaukee, standing on a platform between north-bound and south-bound tracks, when a woman stepped directly in the path of an on-coming engine. Karsten ran to her assistance, expecting to push her off the track. She was a large woman, however, and began to struggle with him, and continued to resist his efforts to get her out of harm's way until the engine struck them. The woman was killed, and Karsten fell between the rails, the tender and all of the engine except the pilot passing over him. When the engine was stopped, he was lying under the pony trucks. His clothing was badly torn, and he was badly scratched, but not seriously injured. Medal awarded, February 28, 1910.

Such as these, the brave, self-sacrificing, simple everyday folk, the common soldiers in the armies of peace, Mr. Moseley delighted to see the nation enroll among its heroes.

CHAPTER XIX

FOR ECONOMIC JUSTICE

WHILE the humane features of railroad regulation enlisted Mr. Moseley's whole heart, he always gave a full share of his thought and energy to the important economic objects of the Interstate Commerce Commission. Commissioner Prouty, in his estimate of the man, which will be found elsewhere in this volume, says "it was largely due to him that the trains of thought and courses of action were put in operation which finally resulted in the Hepburn amendment of 1906" — the law from which the Commission draws its present vigor.

The movement, which Mr. Moseley led, for safety appliances really vindicated and established the power of Federal law over the instrumentalities of interstate commerce before it had been effectively applied to the commerce itself. Although the original Interstate Commerce Act had been passed solely for the purpose of preventing injustice to shippers and passengers, the law, as interpreted by the courts, proved to be woefully inadequate, and for years the Commission was unable to correct the characteristic abuses it was organized to remedy. Public interest fell away from it in large measure.

The Commission developed an unexpected efficiency in dealing with certain conditions of railroad labor, while it disclosed a disheartening helplessness to effect any

marked improvement for the commerce which that labor was engaged in handling. Laws had done much for the employees, but little for the patrons of the railroads.

The Safety Appliance Acts, their approval by the courts and their vigorous enforcement, thus became a convincing example of what the Government could and should do in regulating interstate commerce. They gave complete and convincing proof of the moral obligation and practical efficiency of the General Government as a regulative agency throughout the whole field of commerce between the States.

Early in his service, Mr. Moseley took a position far in advance of public sentiment and political expediency on the subject of the power and duty of the nation over the mighty interstate traffic, which still flowed virtually unregulated, and he held his ground through a long period of distrust and despair. In an address delivered in September, 1900, he employed a striking phrase expressive of his stand: "Some one has said that commerce is war. That may or may not be true; but one thing is certain, unregulated commerce is commercial anarchy." His deep interest in the problem at a time when it was suffering from neglect is shown by the following letters which passed between him and a learned member of the faculty of Williams College in the same year:—

October 2, 1900.

MR. JOHN BASCOM,
Williamstown, Mass.

DEAR SIR:

At two o'clock this morning, worried and troubled, I could not sleep. In casting about for something to read, my eye fell upon your book on "Growth of Nationality

in the United States." I picked it up and immediately became absorbed in it, and I hasten to confess to you that I had failed to read the book and did not know of its contents until a few hours ago.

Harassed as we have been, and almost disheartened of being ever able to be of service to the public in the direction of the regulation of commerce, I have almost felt like giving up the battle. Directed by order of the Commission to secure legislation, I have been making the best effort I could, only to be persecuted and misinterpreted in every possible way. But after reading your book I have taken on new life. It is so fair, so just, and goes to the crux of the trouble, I take hope, finding that some one endowed with ability to express himself so forcibly has taken the position which you have, for there are very few indeed who are forcible and lucid who take the public side of these questions.

Now I do want to know more of you, for I cannot tell you how much you have relieved my feelings. The next letter I write is to Mr. Olney, for the purpose of begging him to read at least chapter six of your book. The justices of the Supreme Court must see the book, and if they are not already in possession of it, I want to have the publishers send a copy to each of them and send me the bill, which I will gladly pay. It should be read by everybody. I am about ordering from the publishers a half-dozen copies for the Commission, and I only regret that I do not have funds at my disposal to put copies in the hands of every shipper in the country.

I take pleasure in inclosing copies of two addresses I recently delivered, and also send a copy of a secret attack which is only one of the many to which I have been subjected because of my efforts to bring about the legislative remedies advocated in your book.

I do not think you have seen a copy of the hearings before the Senate committee in the effort of the commercial organizations to amend the law. The bill introduced was reported adversely, but is still on the calendar.

I am, with great respect,
EDWARD A. MOSELEY.

WILLIAMSTOWN, MASS.

Oct. 6, 1900.

MR. EDWARD A. MOSELEY.

DEAR SIR:

Your letter gave me much pleasure, and I lay awake last night rejoicing in your plucky fight. It will be to you and to the Commission according to your courage and faith.

You have a magnificent calling. Few in our day can do as much. It is a good sign that they abuse you; it shows that your words take hold. "When men hate you and say all manner of evil against you falsely, rejoice and be exceeding glad." I hope you will sleep sound and wake up every morning to put the case anew with undying patience.

I hammer it in to the students and into the community whenever I get a chance. I am professor of Political Science.

I have sent your generous offer in reference to the judges, to the Putnams. I am obliged for the documents. Please keep me posted. What I am most in danger of is ignorance.

With much regard,

JOHN BASCOM.

P.S. I feel some diffidence in letting you pay for the volumes for the judges. I would pay half or the whole, as suits your convenience.

J. B.

A distinguished railroad attorney also testified to Mr. Moseley's efforts at that time in the following letter:—

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
OFFICE OF GENERAL COUNSEL,
OLD COLONY BUILDING, CHICAGO,
October 5, 1900.

MY DEAR MR. MOSELEY:

I must thank you for sending me the pamphlet copy of your address before the Millers' State Association at Atlantic City. I have read it with care, with interest

and with profit. It is a very thoughtful and able production, and I doubt not will accomplish much good. I was particularly struck by the fairness with which you discussed the various questions, for it is certain that nearly all of them are such that something can be said on both sides.

The regulation of commerce has always been in the constitution, although it was never seriously attempted until the passage of the Interstate Commerce Act, and probably years will elapse before there will be a real and genuine regulation of commerce; still, I believe the time will come when the vicious practices now so justly complained of, will be eradicated. The payment of rebates is not only unjust in itself, but it is productive of great harm to the public and to the railroads themselves. I hope you will continue to write on the subject, for what the public most needs is intelligent discussion, and not the ranting of demagogues.

I am expecting to be in Washington before long, and hope to see you.

With best wishes,

Very truly yours,

GEORGE R. PECK.

A letter written by Justice Brewer of the Supreme Court to Mr. Moseley gives evidence of the Secretary's activity in this field as far back as 1892, when he went directly to the justice relative to a rate decision that had lately been handed down. An excerpt from the letter follows: —

SUPREME COURT OF THE UNITED STATES,
WASHINGTON, November 8, 1892.

MR. EDWARD A. MOSELEY, Secretary Interstate Commerce Commission, Washington.

DEAR SIR:

. . . I can confess to be much disturbed by your very careful and valuable suggestions, but I hope that any error, if error there be in the criticized language,

will be speedily corrected. . . . I am very much obliged to you for the frankness with which you called upon me. I shall always be glad to talk over with you the law and practice with respect to interstate commerce. What all must desire, is a correct interpretation of the statutes, and protection to all rights, individual and corporate.

With great respect,

I am, yours truly,

D. J. BREWER.

When at last the question of regulating interstate commerce came to the front once more early in the Roosevelt administration, Mr. Moseley's successful work for safety appliances had perfected him in the fine art of agitation. The Commission employed and relied upon his ability in promoting legislation, to aid in forwarding bills for broadening and strengthening the Federal authority. In the long and arduous campaigns which were waged in Congress, he discharged with discretion the delicate duty of representing the Commission as a whole at the Capitol.

A letter Mr. Moseley wrote in 1902 was remarkably prophetic of all the steps that have since been taken. In it he clearly and concisely described the situation as it was then, and foreshadowed the various remedial measures that have since been adopted. This is the letter:—

April 3, 1902.

MR. HENRY GEORGE, JR.,
101 West 84th Street,
New York, N.Y.

DEAR MR. GEORGE:

Your kind letter, which I greatly appreciate, is received. It is one of those cases of appreciation which are only occasionally met with in the course of official life.

If a man serves wealth and power, his road is usually made quite easy for him; but the public are largely in ignorance of what is going on and have no opportunities of determining whether the average official is friendly or not. They generally take it for granted that a man who occupies a public office holds it by the grace of the powerful.

Permit me to say that the experiment of regulation in fact has never been tried. The Interstate Commerce Law was a compromise, and the adroit agent of the railroad in the capacity of the senator or representative took care to insert language that afforded the pretexts for arguments, which, accepted by the courts, resulted in nullifying what were believed to be valuable provisions of the law. Take for instance the phrase, "substantially similar circumstances and conditions." Harmless words apparently, but they have defeated the express purposes of the proponents of the law.

The same may be said of the undefinable word "reasonable." It is as difficult to determine the reasonableness of a thing without a definition of the word "reasonable," as it would be to fix prices by the quart if the dimensions of that measure had not been settled. Who is to determine when a rate is reasonable? The courts have denied the right to the Commission and practically refuse to do it themselves.

I should like to see an effort at regulation which really meant something. It should, I think, be made a misdemeanor, punishable by imprisonment, for any officer of a railroad to keep any false account or to keep any book or memorandum, other than those established by the law or the regulating authority; this to apply to financial operations as well as to the movement of traffic. No transportation should be issued upon any pretext whatever unless it was duly recorded and open to public inspection. Rates should be public, and it should be made a punishable offense to even offer to depart therefrom. The regulating authority should have the power, when challenged, of prescribing what is a just rate; and the extent and terms on which railroads should accept traffic from other roads.

But this subject is too large for a letter. I only want to say that I believe an earnest and sincere attempt should be made to regulate the railroads by law and the experiment tried; but can such an act be passed when the real friends of regulation are largely outside the halls of Congress and so very few within them?

Should you ever come to Washington, I should be greatly pleased to have you call upon me. If there is ever anything here in the way of documents or information which I can procure for you, pray command me.

Sincerely yours,

EDWARD A. MOSELEY.

Perhaps there is no better way of indicating the part which Mr. Moseley played in the discussion and struggle that followed than by presenting a few letters, and let them tell the story.

August 30, 1905.

HON. S. B. ELKINS, United States Senator, Washington,
D.C.

DEAR SENATOR ELKINS:

I am writing you entirely on my own responsibility and not as an official.

In my opinion, the great wrongs in railroad transportation are due to one or more shippers, by some means or other, having an advantage which competitive shippers do not enjoy. This, I believe, is a crying evil, far greater than those involved in any question of the rate. When every one has precisely the same treatment and has to pay the same rate, a large factor in this question of governmental regulation and the fixing of rates will have been eliminated.

Mr. Spenser has said that he believed in the fullest publicity and, as I understand, so did a number of the other railroad companies. Until we have this, all attempts to see that all receive equal rates will, to a greater or less extent, fail. If all are to enjoy equality of treatment I know of nothing which would be more effective

than the plan proposed in the inclosed suggestion for amendment of the act.

There are a number of other questions which it would be well to deal with. For instance, there is a large amount of commerce which is free from any control; it is neither covered by State nor National law. The first section of the law could easily be broadened so as to remedy this condition.

Then, there is the question whether express companies should not be subject to the provisions of the act. The Commission early decided that express business, conducted by an independent organization, acquiring transportation rights by contract, was not described in the act with sufficient precision to warrant the Commission in taking jurisdiction thereof. I believe, in the light of your amendments to the law, that if the question were to come before the Commission to-day the decision would be reversed, but, unfortunately, the conclusion was reached very early in the history of the Commission.

This, if you will please so consider it, is a confidential letter. I have no pride in anything I may advocate and what I write is merely suggestive.

I am, with great regard and respect,

EDWARD A. MOSELEY.

Receiving from Secretary Loeb the suggestion that he should put his views in writing for the President's examination, Mr. Moseley replied:—

October 4, 1905.

HON. WILLIAM LOEB, JR., Secretary to the President,
White House, Washington, D.C.

DEAR MR. LOEB:

Replying to your suggestion that I put what I desire to say in writing, I submit the following:—

My experience of more than eighteen years as Secretary, in addition to many years of active business life, impresses me with the fact that the greatest sore in the railway situation is the advantage secretly given one

person which another is not permitted to enjoy. Within the past few years it has been repeatedly announced that discrimination practices, which have existed in the past, have been done away with—that rebates have been abolished. It is of no consequence or difference to the public, or to those who suffer, how the advantage is given so long as it is substantial and results in a different rate to one person than that which is allowed to another.

The adroitness of the traffic manager and the shrewdness of the shipper have in many cases changed the form, which these secret advantages have taken, so that the bald method of paying a straight rebate may be little used; but I confidently believe that these illegitimate advantages are afforded now in almost as great degree as in the past.

Notwithstanding the Elkins Law and the authority of the Commission to compel testimony, it is difficult now, as it always has been, to ascertain the facts respecting secret practices. It is only when some railroad finds it is losing business, when some shipper finds his competitor's trade increasing abnormally, or through the grumbling of some dissatisfied employee, that the investigating body can obtain information which will justify the institution of an inquiry. Even then these investigations, in very many instances, fail to develop the true situation, which, if brought out, would justify presentation of the matter to the prosecuting officers of the Government.

It follows, therefore, that no matter how desirable it may be to amend the act in other respects, if there are provided no means of obtaining the information necessary to successful prosecution, these ruinous practices will continue. The cure for the evil is publicity of the accounts of common carriers. It should be made a criminal offense for any common carrier engaged in interstate commerce to keep any book, memorandum, or data other than those prescribed by law or regulation, and such books or memoranda should be open to the inspection of representatives of the government who are expert accountants and familiar with the methods of railroad bookkeeping. . . .

When every man can feel assured that he will pay the same charge for the transportation of himself and his property as is paid by others for the carriage of other persons, or like property, under similar conditions, the railroad problem, so-called, will be a long way towards solution.

I am, with great regard and respect,
EDWARD A. MOSELEY.

November 21, 1905.

HON. JOHN W. GAINES, Nashville, Tennessee.

DEAR MR. GAINES :

I notice that the coal men of Tennessee are about to have a convention at which it is proposed to pass resolutions against the President's position in regard to the rate question. Is it possible that Mr. D. M. Parry, buggy manufacturer, and also vice president of the Indianapolis Southern Railway, Daniel Davenport, of Bridgeport, Connecticut, employed by the railroads, and F. B. Thurber, also employed by the Erie Railroad, will be there to aid and assist in condemning the President's attempt to obtain justice for all and his effort to secure fair treatment?

Paraphrasing the remarks of certain persons who called upon the President to urge him not to recommend any legislation looking to an increase in the power of the Commission over rates, they practically said: Do not take any steps to restrain the exactions of the railroads and relieve the rest of the community. A "square deal" with us means that the railroads should be allowed to continue to levy tribute unrestrained on the public generally in order that they may be better equipped to grant us favors and discriminate for our benefit.

Have the people down in your section forgotten the words of that eminent statesman, Milton H. Smith of the Louisville & Nashville: "If the people don't like it, they can walk." Have they forgotten the time when the people of Nebraska were burning corn for fuel, notwithstanding the fact that the mine operators of Tennessee and Kentucky would gladly have sent them coal

and regardless of the fact that the particular railroads over which the coal would have been transported were willing to carry it at rates which would permit of its movement, but the octopus at that time of railroad management — the gentlemen's agreement or association — forbade it being done because it would disturb the joint rate situation, and what coal did go to Nebraska and Kansas continued to go from the mines of Pennsylvania and Ohio? It really seems to me that a great many people have very short memories.

This is not written as Secretary of the Interstate Commerce Commission, but is only a personal line to yourself.

I am, with great regard and respect,
EDWARD A. MOSELEY.

January 30, 1906.

HON. P. C. KNOX, United States Senator, Washington,
D.C.

DEAR SENATOR:

The Chairman returned this morning. I have submitted your request to him and he will make reply.

I want to say, however, that reparation through any tribunal, judicial or otherwise, for injuries resulting from discrimination or unreasonable rates has never proved of great practical value and is entirely inadequate as a protection to those suffering the injury. We have been unable to find any case either in Great Britain or the United States, in State or Federal courts, where one who has been injured has recovered anything in court on account of an unreasonable rate. The Commission has endeavored to grant relief in this respect and has ordered that reparation be made, but only one case has ever been tested in court. In that case the complainants prevailed in the Circuit Court but were defeated in the Court of Appeals. See F. R. 137, p. 343. The case is now in the Supreme Court.

It is admitted, I believe, by all that after a transaction is completed and the shipper has paid the rate to the carrier, reparation therefor can only be recovered legally

by a proceeding before a court and jury ; so that, however plausible the theory of righting every wrong in court may seem and however adequate the same may, in fact, be in respect to ordinary controversies, it is manifestly illusive and inadequate as to the rights of those who bear the burdens of freight rates.

Often the man who ships and pays the rate and who alone could sue in court because he alone is known in the transaction has not been hurt by an unjust or excessive rate, since in the purchase and sale of the article he has taken care of himself and cast the burden on the consumer or producer or both. In most cases, though, the hampering limitations upon one's business by reason of unjust discrimination in rates or facilities are certain, serious and possibly even destructive ; yet how can they even be measured and definitely located with that certainty and directness necessary to support a specific verdict for a definite amount in dollars and cents against this road and that one ?

When one's business has been greatly damaged or destroyed by unjust rates and he sues for damages and undertakes to prove the same, how can he do it ? If he proves what shipments he has made, and shows the excess in rates paid thereon above what would have been just and reasonable, he might recover this, but in most cases this would only be a small part of the injury he had sustained. When he goes beyond this and tries to show what greater business he could and would have done upon fair and just rates if he had had them, he soon gets into the domain of uncertainty and so-called speculative damages and is cut off.

The only even approximately adequate protection to those who have rights involved in the question of just and reasonable rates, in the very nature of the case, is the establishment of just and reasonable rates beforehand upon which to do business. These wrongs once done can never be righted, for their extent can never be ascertained and measured. Prevention is the only possible protection.

With great regard and respect,
EDWARD A. MOSELEY.

HOUSE OF REPRESENTATIVES, U.S.,
WASHINGTON, D.C.

Feb. 7, 1906.

Many thanks, my dear Mr. Moseley, for your very kind note which has just been handed to me.

I am very glad that you approve what I said to-day on the rate bill. It confirms my opinions and gives me reason to be satisfied with my performance on the floor — a feeling which was by no means strong with me before I read your words of encouragement and praise.

Yours very sincerely,

W. BOURKE COCKRAN.

In the following letter to a lawyer, who had been retained by the Commission, the methods of the Commission are disclosed : —

April 26, 1906.

DEAR MR. — :

In regard to the publicity which has been given to your employment, it is very annoying to the Commission that their business should have any circulation in the papers. It is entirely contrary to their settled policy. The hearings, of course, are open and so are the reports, which they officially announce.

Whether it was your statement or that of Mr. —, the results seem to have been the same. Every paper in the country, almost, has announced your employment by the Commission and in a way which would give the impression that the Commission has entered upon a crusade against certain interests rather than pursuing the calm, deliberate course which should characterize a body of this sort. Nothing could be more unfortunate, particularly at this time when the Senate of the United States is deliberating about conferring more power upon the Commission.

The Commission can accomplish all the public desires without the aid of public announcement and do so in a far more effective way. Anything which looks as though

the Commission had dropped a judicial view of things and were becoming prosecuting officers is detrimental to their interests, particularly at this time. If, therefore, in future, before any action is taken, you will consult with Mr. —, it would be better. You will bear in mind, please, that I urged your employment by the Commission as an assistant and aid to Mr. —, and the Commission fully understands that he is in charge of the matter. .

I beg of you to make no announcement of who is subpoenaed or what course is contemplated by the Commission, and that all information which is given out in regard to this matter comes from the Commission direct.

Very truly yours,

EDWARD A. MOSELEY.

May 10, 1906.

HON. STEPHEN B. ELKINS, United States Senator,
Washington, D.C.

DEAR SENATOR:

I want to call your attention to the amendment adopted by the Senate prohibiting carriers transporting any article or commodity which it manufactures, mines, produces, sells, or has any interest in and especially to the excepting clause at the end, which reads as follows: "except such articles or commodities as may be necessary or used in the conduct of its business as a common carrier."

Now, the exception goes to the article or commodity and not to the extent of the transportation for its own use, and the danger is that the excepting clause may be so construed that coal, which is used by the carrier in its business, will be entirely excepted from the amendment. In point of fact, of course, the real purpose of the amendment is to prohibit the carrier from having any interest in the coal, etc., transported except as the use of such commodity may be necessary in the conduct of its business. It is suggested that the following excepting clause would more nearly meet the requirements of the amendment: "except to the extent that the transportation of any such article or commodity may be necessary for the

use of that article or commodity in the conduct of its business as a common carrier."

I am, with great regard and respect,
EDWARD A. MOSELEY.

May 16, 1906.

DEAR MR. — :

Your telegram just received. I send you herewith, special delivery, a copy of Congressional Record, which I think will interest you.

Senator Hale took occasion to say twice, as I am told, that the Commission got in their work overnight. I hear that Senators Lodge and Hale are very much irritated with us. Senator Gallinger moved to lay the amendment to increase the Secretary's salary on the table. A friend of mine, who saw him this morning, told me that he said that he would fight and oppose me as long as he has breath, and that I was an "anarchist" and that I was "the originator of all this radical legislation." You can therefore understand the feeling.

The truth really is that I did get around. The first man to tell me of our victory was Senator Dillingham. . . . Whether we can hold our ground or not I do not know. Very likely the writer may have to go down in the struggle, but they were making anxious inquiries yesterday from the Capitol to find out if any of the Commissioners were in town. I suppose they want to fix the deviltry upon somebody besides an insignificant Secretary.

I write you under great pressure of work. They are now discussing the Allison amendment. I send you yesterday's *Chicago Tribune*; it may interest you. There is a lot of suppressed — and ill-suppressed — bad blood.

With great regard and respect,
EDWARD A. MOSELEY.

June 29, 1906.

HON. WILLIAM H. MOODY, Attorney-General, Washington,
D.C.

DEAR MR. MOODY:

The Rate Bill has just passed. I have hastily run over its provisions. Few people have studied the bill

and really understand what is in it. The review, which I inclose, was prepared on the spur of the moment, but I think it contains all the essentials. This was made for my own gratification and I have not given it to anybody.

In reference to the Attorney Bill, Senator Clark states that he will substitute the House Bill therefor, and when my informant left the Capitol the Senator was awaiting recognition from the vice president to bring the matter to the attention of the Senate.

I am, with great regard and respect,
EDWARD A. MOSELEY.

July 2, 1906.

HON. STEPHEN B. ELKINS, United States Senator,
Washington, D.C.

DEAR SENATOR:

The battle is over and the public have received more than the friends of the legislation ever expected to get. I feel that there are few who really understand what the law means better than the writer, and, therefore, from my point of view the satisfaction is all the greater. You certainly have made an earnest fight for a fair, just, and thoroughly effective measure, and I am sure that time will prove that it is of as great, if not greater, value than its predecessor, the Elkins Law.

As far as I am personally concerned, I have to thank you for your earnest efforts in my own behalf. I am particularly able to do so because all that you did was entirely without solicitation on my part.

I have just had the pleasure of reading your speech before the West Virginia Bankers Association at Elkins, West Virginia, January 20, 1906. I may truthfully say that it is fine; one of the best I have ever read. I have heard some sermons which were not half so good. Few appreciate that wealth has its burdens, as onerous sometimes and insistent as are the privations of poverty, and that the golden eagle is not necessarily the ticket of admission to happiness.

Wishing you all success, I am,
With great regard and respect,
EDWARD A. MOSELEY.

The Act of 1906, clause by clause, reflected the ideas which Mr. Moseley had been advocating for several years. It empowered the Commission to suspend any excessive rate and to establish a fair rate in accordance with its best judgment; it brought express and sleeping car companies and pipe lines within the law; it stopped the free pass abuse; under it all common carriers to-day are compelled to keep their books and accounts by a uniform method which the Commission has devised and prescribed, so that an inspector from Washington may walk into any railroad office in the United States, and read at a glance the record of any transaction, and trace the receipt and expenditure of every dollar. The Act also increased the number of Commissioners from five to seven and their salaries from \$7500 to \$10,000 a year.

The last words of Mr. Moseley to be quoted on this subject were spoken in an interview published throughout the country on June 5, 1910. "Has the regulation of railroads been of practical benefit to the people?" the interviewer asked.

"Oh, most assuredly," Mr. Moseley replied. "Formerly when a man took a carriage to the railway station he paid for the service at a rate established by the municipality. Hackmen had to post the official tariff of fares inside their vehicles as a measure against robbery. But the man, passenger or shipper, arriving at the depot, found a halo of sanctity around the head of the ticket seller or the freight agent, and he paid the price demanded, unless he decided to walk or carry his goods on his back. All information and all power for per-

forming a public function were centered in the railroads themselves.

"A big shipper could negotiate, or have a friend, a relative, or a tool in the traffic department. The merchant on the opposite corner from Marshall Field in Chicago saw Field prospering and underselling him because of rebates that were denied every one else. The Standard Oil Company made an arrangement by which the railways lined their own pockets and paid it \$1 a barrel for all the oil that was shipped by its competitors.

"Such swindling of the public is now outlawed. Rebates and discriminations are largely stopped, and would be altogether so if our courts would send some responsible railway officials to prison — not an understrapper, who is obeying orders, but a bright and shining light in the world of high finance. One jail sentence, served to the last minute, would wholly clear the atmosphere."

CHAPTER XX

QUESTIONS OF LAW

MR. MOSELEY'S experience led him to take the broadest view of the national power under the Constitution.

The best example of this is found in a pamphlet which he issued in 1907 under the title of "Federal Supremacy." The conclusion he announced in that document was far ahead of judicial decisions. Indeed, it anticipated by four years and was a close forecast of the opinion of Judge Sanborn in the Minnesota rate cases, April 29, 1911.

Supporting his argument in the pamphlet with a wealth of citations, Mr. Moseley passed from the assertion of the exclusive power of Congress to regulate interstate commerce to the contention that any attempt of a State to control interstate carriers by fixing the rates they shall charge even within the limits of the State would involve a conflict of power. This was the closing paragraph of his pamphlet:—

The laws of a state have no extra-territorial force. They can operate only within its limits, and the legislatures of states through which an interstate road may run, moved by local prejudice and whim, each, in time, passing laws regulating rates to be charged by that road, presents a total lack of uniformity. The power in the Federal government being unquestioned, the control by it of the interstate carrier follows, even to the extent of controlling rates charged for transportation anywhere on its line. This power arises not alone from the commerce

clause of the Constitution, but from various clauses therein; it is the aggregate of powers, both enumerated and implied, which constitutes the Federal sovereignty; and it is the exercise of those powers which insures to the greatest number of the people the greatest good.

Mr. Moseley's views of the Federal power were so out of accord with the traditions of the Democratic party that he often lost patience with Democrats in Congress, when many of them showed, particularly at first, a dread of the centralizing tendencies of his various bills. It was, however, a Democratic House, with a Democratic speaker, which passed his first bill, the Safety Appliance Act of 1893. But in his increasing absorption in subjects entirely outside of party politics, he quite lost interest in partisanship of any brand and got what he could for his cause out of each of the parties.

Mr. Moseley published and distributed, presumably at his own expense, an eight-page pamphlet under date of December 23, 1906, championing the proposal, which President Roosevelt had indorsed, of giving the government the right of appeal on points of law in criminal cases. The pamphlet was offered as a rejoinder to Mr. Milton H. Smith, president of the Louisville & Nashville Railroad. A few quotations must suffice to show the vigor with which the writer argued his case:—

As matters now stand, a person charged with crime under a Federal statute has only to employ an astute lawyer to draw up a demurrer to the indictment, charging that the law under which the action is brought is unconstitutional. If a Federal judge can be found to sustain the demurrer, the defendant goes free without any determination of the merits of the case; and the

Government, having no right of appeal, cannot protect the integrity of the law by taking the case to a higher court for review.

In other words, the defendant is absolved from punishment for a crime of which he may be guilty by the decision of an inferior court on a mere point of law, and there is no method by which a higher court may be brought to say whether or not the decision of the lower court is erroneous. . . .

In urging the passage of the bill now pending in Congress, the President used the following language in his last annual message:—

“I cannot too strongly urge the passage of the bill in question. . . . I have specifically in view a recent decision by a District Judge, leaving railway employees without remedy for violation of a certain so-called labor statute. It seems an absurdity to permit a single District Judge, against what might be the judgment of the immense majority of his colleagues on the bench, to declare a law solemnly enacted by Congress to be ‘unconstitutional,’ and then deny to the government the right to have the Supreme Court definitely decide the question.”

This is the language that aroused the ire of Mr. Smith, causing him to characterize the President's conduct as “dastardly” and charging him with an attempt to intimidate the Judge. However, the fact that Mr. Smith's railroad was virtually the defendant in the case referred to by the President may perhaps explain the violence of the gentleman's criticism, while at the same time detracting from its value. . . .

On the invitation of the editor of the *New York Herald*, Mr. Moseley wrote a general review of the railroad situation, which was published in that paper, on January 2, 1908, and which filled more than a page. After discussing the constitutional and practical distinctions between Federal and State control and elucidating the position of the Interstate Commerce Commission, he unfolded the

story of the progress and prosperity of the railroads of the country.

Again the rule of reason, which the Supreme Court has since read into the Sherman Law, was discussed by Mr. Moseley in the appended letter:—

March 24, 1908.

DEAR MR. LOEB:

In Sunday's *Herald* I noticed, as you will see by the inclosed clipping, that it was proposed by the President to recommend to Congress the passage of a law exempting reasonable combinations and reasonable contracts from the operation of the anti-trust law.

I am considerably disturbed about this, if the criminal features of the law are to remain, for the reasons set forth in the accompanying memorandum. I am confident that if the proposition is made by the President that it will be attacked by the Administration's opponents, who will claim that it is a covert attempt to destroy the law.

Please use your own judgment as to speaking to the President about this matter, because I don't want to be in the position of a "butter in," and this is written you personally and not officially, and without consultation with others.

With great regard and respect,

EDWARD A. MOSELEY.

HON. WILLIAM LOEB, JR.,

Secretary to the President, Washington, D.C.

Mr. Taft, in the course of his campaign for President in 1908, having hinted at the policy, which he finally adopted, of establishing a Commerce Court, Mr. Moseley did not hesitate to lay before him the objections to such a policy:—

October 12, 1908.

DEAR MR. TAFT:

Supplementing my letter of the tenth instant, and pursuant to my postscript thereto, permit me again to

advert to your recent intimation that the functions and duties of the Interstate Commerce Commission should be segregated. Lack of time precluded, in my communication of Saturday, the presentation of my views with such particularity as I believe expedient.

I desire especially to amplify what I had to say with reference to the determination of what is and what is not a reasonable rate. This is one of the most important duties of the Commission, and requires for its performance the exercise of functions preëminently legislative. For the Commission to act judicially in the establishment of a rate would be subversive of the very purposes for which this body was created. The Commissioners are in no sense judges, and the popular misconception to the contrary is utterly without foundation in fact.

To elaborate upon the analogy I suggested the similarity between the establishment of local cab tariffs by the Commissioners of the District of Columbia and the regulation of the rates covering interstate transportation. The jehus of Washington are granted a hearing before the District Commissioners. They are permitted to introduce evidence as to the prevailing cost of equipment, fodder and repairs. They are allowed to testify as to the volume of traffic in designated localities. Then, from a consideration of all these elements, the Commissioners decide that cab fares shall not exceed twenty-five cents for fifteen squares.

There is no actual relation between the expenditure for equipment and maintenance and the charge prescribed for the service. The exact cost of the transportation is, in the very nature of things, not susceptible of accurate computation. There is no process of deduction that could yield the identical result at which the Commissioners arrive. They establish what in their opinion constitutes a fair return for the services rendered, viewed from the standpoint of the cab driver as well as protection of the traveling public, but their conclusion is, in reality, the product of the merest guesswork.

So with the ascertainment of reasonable rates by the Interstate Commerce Commission. Take, for instance, the rate on hairpins from New York to the Pacific coast.

The entire amount involved in the transportation of this traffic aggregates only a few hundreds of dollars. It would be absolutely impossible to ascertain the ratio of the wear and tear occasioned thereby to the general depreciation of equipment. It would be equally impracticable to attempt an investigation into the intrinsic cost of transportation. The carriers, however, have established what they believe to be a rate commensurate with the service expended. If the charges assessed under such rate inflict hardship upon the dealers in the articles mentioned, they may appeal to the Commission to have such rates for the future reduced. Precisely as in the case of the cab drivers, they may present testimony to show that the prevailing freight rates imperil their interests. The carriers may submit their evidence in justification of the tariff attacked. The Commission weighs the proof offered by both sides, determines the happy average, and the charges are reduced or not as the circumstances may appear to warrant.

In any event, the Commission can only guess at the propriety of a given rate, and in the case stated, they merely substitute their own estimate for the conjecture of the railroad company. The decision of each is characterized by a like incertitude, but it is only reasonable to assume that seven men of the tested probity of the Commissioners, untrammelled by the persuasion of self-interest, and actuated solely by a desire to promote the public weal, would much more nearly approximate a reasonable tariff than could the officials of the railroad company, biased, as they must necessarily be, by the proddings of personal advantage.

The carriers established rates in the first instance, and such charges remain in effect until they are modified by the companies themselves, or condemned as unreasonable by the Commission. The welfare of the public can be conserved only by allowing an appeal from the otherwise arbitrary fiat of the railroad companies. Such an appeal could not be submitted directly to the courts by the parties aggrieved, because the establishment of rates is a matter beyond the purview of judicial discretion. There has never been an instance in any court where a com-

plainant has recovered a scintilla of reparation because a rate was unreasonable.

This essential recourse can be had only to the Interstate Commerce Commission. Their efforts have met with the unstinted approval and coöperation of the various boards of trade, traffic associations and chambers of commerce through the country, and the innumerable testimonials received at this office from benefited complainants, commendatory of their work, fully attest the unqualified indorsement of the present regimen.

The question of rates involves a consideration of so many factors that it is absolutely essential that the Commission shall have ready access to all the railroad tariffs, contracts, agreements, etc., now filed by the carriers; that they shall have the power to investigate at all times the books and accounts of railroad companies; and that their investigations shall not be circumscribed by the inflexible rules of judicial procedure.

A final appeal to the Federal courts should properly be allowed from the orders of the Commission, to secure an ultimate determination of the Federal questions presented, as by the suggestion of confiscatory rates, due process of law, etc., incidents protected by the Constitution of the United States. The question as to whether or not the Commission has the power to regulate freight rates is now on certification to the Supreme Court, in the Willamette Valley lumber cases, and we will be fully advised as to the true status of the proposition when the decision is handed down by that tribunal.

Another aspect of the situation to which I wish to direct your particular attention concerns the effectuation of the Safety Appliance Laws. The Department of Justice has left almost entirely to the Commission the prosecution of cases under these statutes. We have our own attorneys, specialists in this branch of the work, whose attention is confined exclusively to the work of this division. The Commission has instituted the novel practice of intervening in private causes whenever any of the acts intrusted to them for enforcement are assailed. The result of their efforts in the enforcement of these laws is a line of favorable decisions unparalleled by

any law on our statute books. This same policy of specialization is pursued by the Commission in every field of their endeavor, and it must, of necessity, produce the very best results.

Our vigorous enforcement of the Safety Appliance Laws has resulted in a material reduction in the number of railroad fatalities, a fact which is duly noted and appreciated by our vast army of railroad trainmen, and it may be said with certainty that any attempt to dissipate the efforts of the Commission in the execution of these laws would meet with an overwhelming storm of protest from the beneficiaries thereunder. . . .

I trust you will condone the length of this communication, which, I assure you again, is prompted by a personally disinterested desire to advance the welfare of all concerned. As you are aware, my position is such that I would not be affected one way or the other by the consummation of your suggestion, but it occurs to me that the propagation of the ideas advanced might be unwise just at this time.

I am, with great regard and respect,

EDWARD A. MOSELEY.

CHAPTER XXI

CUBA AND THE COAL STRIKE

THE story of Mr. Moseley's visit to Cuba on business at the time of the unsuccessful Ten Years' War for the liberation of the Island and his acceptance of a hazardous service for the revolutionists has already been told. That early experience lends added interest to a useful work he performed for Cuba when at last her independence was won.

In the closing days of the American occupation of the Island, the Military Government wished to prepare a general railroad law and have it in operation when the transfer of power to the republic of Cuba should take place. Mr. Moseley was chosen as the adviser of those who were engaged in the task, and General Leonard Wood, the Military Governor, sent him the following invitation:—

HEADQUARTERS MILITARY GOVERNOR, ISLAND OF CUBA,
HAVANA.

December 23, 1901.

MR. EDWARD' A. MOSELEY, Secretary, Interstate Commerce Commission, Washington, D.C.

SIR:

I am proposing a general revision of the existing railway laws of the Island, and the Secretary of Public Works has requested me to ask you to give us your assistance, thinking same will be of great value. Could you come down here for a couple of weeks, and if so, what compensation would you desire? I would appreciate it very

much if you could come and realize fully that your opinion and assistance would be of great service to us. Please cable me if you can come.

Very respectfully,

LEONARD WOOD,
Military Governor of Cuba.

Mr. Moseley was very busy at the time, but, after some further correspondence by cable, he was convinced that there was an opportunity to discharge an important and attractive duty, and he went to Havana. There he found a novel situation which appealed to his imagination. A single American, in the person of the Military Governor, had the power to adopt and enforce, in a month, a complete scheme of railroad regulation such as the President and Congress and Courts of the United States thus far had been unable to formulate and establish for this country, after twenty years of discussion.

When Mr. Moseley arrived in Havana, however, he saw at once that the railroads were as keenly alive to their interests in Cuba as they were in the United States, for in the draft of the law which had already been prepared, the welfare of the companies was well guarded. He felt that certain modern measures for the protection of the public had been neglected, and also that the plan might work a harsh injustice to the employees.

General Wood had wisely selected him to revise the draft, and when Mr. Moseley had pointed out the defects, the general asked him to redraw or amend the regulations wherever he deemed necessary and make them just to the people, the railroads and their employees. This he proceeded to do, and, conscious of the arbitrary

power of the Military Government behind him, he saw to it that Cuba should have a nearly ideal railroad law.

Not only was the Railroad Commission authorized to fix rates, but Mr. Moseley also drew up a provision empowering the Commission to interfere between the railroads and their employees to protect the latter. He incorporated in the law a virtual recognition of labor unions by providing that employees might be heard through their representatives in these terms:—

“The Commission is to revise and approve the by-laws and working regulations of railroad companies, and all such regulations pertaining to and affecting employees are to be approved only after the aforesaid employees and their representatives have had opportunity to be heard before the Commission.”

After his return to Washington, Mr. Moseley explained this phase of his work in the following letter, under date of March 27, 1902:—

I take great pleasure in sending you a copy of the railroad law of Cuba, which has been established by the Military Governor, Major-General Wood. This law includes a uniform classification and rules of practice before the Commission, which is created by the law. This will be the railway law of Cuba after the American occupation has ceased.

I went to Cuba to assist in its preparation and, of course, am very much interested in it. From the last clause of the abstract of the law, copy of which I inclose, you will see that I have been doing some work for the men. I could not well put into the law the word “organization,” but you will readily understand that it is an encouragement to organization in that the representatives of employees are recognized.

As I took the responsibility of urging this, I trust you will give it whatever notice you deem proper. Of course I do not want to be connected with the matter in any way, but I think the credit should be given to Major-General Wood, who approved of its insertion in the law. When I returned, I told the President what I had done, and in his characteristic way he expressed himself as greatly pleased with it and said: "Bully, old man; bully for you, I cannot tell you how much satisfaction this gives me."

I believe that the new Republic should start off by recognizing labor and the representatives of labor. I expect to have to go down to Cuba again to aid in the final adjusting of tariffs. One of the things that the people of Cuba have to dread is the demands made upon them by the owners of the railroads of Cuba, who are mostly foreigners, and under the circumstances it was deemed that if a fair and just law was made the United States could assist the infant Republic in the enforcement of it.

I believe it is perhaps the best law upon the statute books of any country undertaking to regulate railroads, and there was great necessity for it. The former law put the railroads of Cuba absolutely under the control of the Minister of Public Works, and if executed it would have been harsh and extreme, but owing to the venality of the Spanish officials and their willingness to accept bribes, it was more honored in the breach than in the observance.

On Mr. Moseley's departure for Washington, General Wood wrote in appreciation of his services:—

HEADQUARTERS MILITARY GOVERNOR, ISLAND OF CUBA,

February 25, 1902.

HON. MARTIN A. KNAPP, Chairman of the Interstate
Commerce Commission, Washington.

SIR:

I have the honor to state that Messrs. Edward A. Moseley and Martin S. Decker, Secretary and Assistant

Secretary, respectively, of the Interstate Commerce Commission, have been detained in Havana upon my request and have rendered most valuable assistance in the revision of the railroad laws of Cuba and the classification of rates.

It is regretted that they are unable to remain longer, and I beg to assure you that their services have been most highly appreciated and will be of great and lasting benefit to Cuba.

I hope that at some early date the Commission will permit the return of Messrs. Moseley and Decker to this Island, as I desire their assistance on the question of the railroad tariff.

Very respectfully,

LEONARD WOOD,
Military Governor of Cuba.

In a few weeks this second call was received from General Wood:—

HEADQUARTERS DEPARTMENT OF CUBA. HAVANA.

April 3, 1902.

ADJUTANT GENERAL, WASHINGTON, D.C.:

For transmission to Chairman Interstate Commerce Commission. Desire presence of Mr. Moseley for few days in Havana to confer with Railroad Commission on question of rates. Expenses will be met from insular funds.
WOOD.

On this second visit to Havana, Mr. Moseley attended the hearing of the protest from the railroads against any law being enforced affecting their interests, rights, and concessions under the Spanish-American treaty of peace. Before leaving the Island, he passed on the regulations and tariffs for every railroad in Cuba, and one of the principal railroad managers was not long in acknowledging that while he had bitterly opposed the law at first,

it proved to be nearly perfect in operation, that the rates were just and that the business had increased enormously.

Mr. Moseley had declined from the outset to accept pay for his services to the Military Government, which at first General Wood was inclined to compensate out of the Cuban treasury at the rate of \$100 a day. After the work was finished to the satisfaction of the General and the Railroad Commission, an allowance of \$5000 was proposed. Mr. Moseley persisted in his refusal to accept any money whatever for his services, he having made it a rule in the beginning of his official life not to receive any fees or any form of compensation other than his lawful salary.

The value of his labors is a matter of official record. In his report to the War Department, General Wood said :—

Mr. Moseley's work was extremely valuable and of great assistance. His vast experience as Secretary of the Interstate Commerce Commission, and his clear judgment in all matters involved, was of immense assistance in rounding out the law, and he virtually directed the regulations embodied in Order No. 117. He also largely influenced the provisions of Order No. 61.

Mr. Frank Steinhart, chief clerk of the department of Cuba, also wrote :—

Only one thoroughly acquainted with the condition of affairs then existing here can appreciate General Wood's statement that your work was extremely valuable and of great assistance; that your clear judgment in all matters involved was of immense assistance in rounding out the law, and that you virtually directed the regulations embodied in Order No. 117 and largely influenced the provision of Order No. 61.

Another interesting service, apart from his duty to the Commission, fell to Mr. Moseley when President Roosevelt appointed him an Assistant Recorder of the Anthracite Coal Strike Commission in 1902, the other Assistant Recorder being Mr. Charles P. Neill, afterward Commissioner of Labor, and the Chief Recorder being Colonel Carroll D. Wright. The distinguished men whom the President selected to arbitrate the dispute between employers and employees, which had closed the hard coal mines and threatened the country with great hardship on the eve of winter, requested Mr. Moseley to act as their disbursing officer.

It happened, however, that the Commission had no funds to disburse. The law had not created it, and there was no appropriation to meet its expenses. Its resourceful disbursing officer, nevertheless, arranged at once to place \$20,000 at its disposal on his own personal credit, trusting to the fairness of Congress to reimburse him. When President Roosevelt sent for him to talk over the affairs of the Commission, Mr. Roosevelt said, "The Commission must not fail for want of money; you are disbursing officer, and if you need funds, draw upon my private purse."

"I am pleased to tell you, Mr. President," said Mr. Moseley, "that I have already arranged that matter on my own account."

The *Scranton Truth*, published in the city where the Commission held its sessions, said of Mr. Moseley in a personal sketch:—

If it should be asked who is the most popular man attached to the Anthracite Commission among all the distinguished persons brought here through the sessions, there would be a unanimous opinion uttered that Assistant Recorder Moseley is the one. Everywhere in demand, everywhere wanted, everywhere honored and respected, and even beloved, he is at once the most necessary as well as the most unobtrusive individual connected with the hearings. There are few people familiarly seen about the Lackawanna County Court House, from judges to scrub women, who do not look upon Mr. Moseley with smiles of approval. It is never too much trouble for him to be kind, and he is never in too much of a hurry to be civil to the humblest as well as the highest.

He is the one who makes smooth the rough places, not only for the members of the Commission, but for everybody in the vicinity. He always has a supply of peace, which he ladles out in copious quantities among those who are disposed to make disturbances, and his pacificatory methods would probably settle anything on earth except the present controversy. He is one of the few men in this country who have not written a piece for the newspapers, telling how to settle it, and yet those who know him pretty well believe that he might be depended on to evolve a reasonably practical recipe for healing even these grave differences.

The Chairman of the Commission, Judge George Gray of the Federal bench, was an old personal friend of Mr. Moseley, and when the work of the Commissioners had been successfully finished they were all his personal friends. In the closing days of their work, they were his guests at dinner at the Metropolitan Club in Washington. "Your recent services with the Anthracite Coal Strike Commission," Judge Gray afterward wrote Mr. Moseley, "I am sure were such as to make each member of that Commission your warm personal friend."

CHAPTER XXII

A REPUBLIC'S GRATITUDE

THROUGH all the years Mr. Moseley was tirelessly working for the interests of others, he did nothing and asked nothing, absolutely nothing, for himself. He gave his time, his money, and his health, and took nothing in return.

The man literally gave himself, and forgot his own interests. He renounced all claim to public applause, which would have been as gratifying to him as to any one, and cheerfully passed over to others the credit for his successful labors.

He sought no political advancement or official promotion. He asked for no increase in salary in the nearly twenty-five years that he held office, and he brought upon himself suspicion and investigation, in an era of muck raking, because it was plainly to be seen that he was not living on his government pay.

When one or two discharged clerks, who must have exhausted his almost boundless forbearance, took revenge by bringing charges of petty irregularities against him, not before the Commission, but in other quarters less informed, the obvious fact that he was not living within his official income was seized upon as a suspicious circumstance. Possibly the department which entertained the charges was predisposed to welcome them by

its ambition to absorb some of the functions of Mr. Moseley's office, an end which might be promoted if any looseness should be disclosed in his conduct of it.

It was a time when the muck raker was very busy in Washington. Rumor mongering and scandal mongering were at a premium. The energies of the secret service were diverted from counterfeiters and moonshiners, while its agents trailed and spied on senators and representatives and officials of the executive departments.

Mr. Moseley was under this un-American kind of espionage for weeks before he had a hint of it. The Commission was as innocent as he of the inquisitorial proceedings directed at him. When at last the secret service men disclosed themselves to him, he promptly gave them his keys and free access to everything within his control, including his personal correspondence, his private accounts in banks and his private safe-deposit compartments.

This was near the beginning of 1904. Leaving behind him all possible means of searching out every transaction in his official and private affairs, Mr. Moseley turned his back on his office, and went to his home resolved not to interfere in any way with the investigation, and not to return until exonerated.

His friends, seeing only the absurdity of the thing, made a jest of the whole business. But he who was by no means thin skinned in a fair fight, and always took the knocks that came to him with a smile, showed himself as sensitive in his honor as a woman, and was all but overwhelmed by the humiliation put upon him.



Mr. Moseley at his desk



Among his effects was found this pathetic memorandum, scribbled with a pencil on some little sheets of paper: "The position which I have been in since December 31 is horrible. . . . After being followed for six weeks by secret service men, then to be held up in ignominy for five weeks more and kept in total ignorance of the charges against me, while the detective continues to 'run down clews,' confers with my accusers, who are devoid of all character, and also with every employee who in the past seventeen years has been discharged, in the hope of manufacturing a case against me, I have refrained, against the advice of friends, from doing anything. My regard for the President, and my belief in his integrity of purpose, have kept me quiet. I am sure he cannot realize the suffering I am made to endure, inflicted on me in his name."

His bearing in that trying time was truly expressive of the man who was always ready to defend a friend and take the part of the under dog, joying in a fight for others, but who could not lift a hand for himself when unjustly and shamefully attacked, and "refrained from doing anything" for his own protection. He waited at his home until President Roosevelt sent for him and told him that, after a searching investigation, he had been entirely vindicated.

The official announcement of the outcome, in May, 1904, was made by the Interstate Commerce Commission which, after spreading on the records of the Commission a detailed account of the vindication, quoted this expression of confidence which the Commissioners

had not hesitated to give him while he was under fire, and before the investigation had exonerated him.

We take occasion to say further that you have always been, during the entire period of our association with you, a capable, energetic, and trustworthy official. While as Secretary of the Commission your office hours have not been regulated by any rule, you have shown your desire to observe the proprieties of official conduct by constant and regular attendance, frequently, and we think generally, exceeding the number of hours required of our clerical force, and you have not been known to absent yourself, at any time or for any reason, without express permission.

Your duties have been manifold and exacting, especially in recent years, and those duties have been discharged with exceptional zeal and fidelity to the public interest. You have not only been loyal to the Commission and devoted to the work in which it is engaged, but your efforts to secure wholesome and needed laws and enforce their observance have promoted the cause of humanity and entitled you to honorable distinction.

Your personal conduct at the office and elsewhere, so far as we have had opportunity to observe it or know about it, has been exemplary and commendable, while the unselfishness and generosity of your disposition, particularly in matters affecting your financial interest, have often been the subject of favorable comment. In all the period of our connection with the Commission, you have never intimated a wish to have your salary as Secretary increased, and you have steadily refused to accept extra compensation for your services as disbursing officer, although the sum of \$500 a year was voted to you by the Commission in 1891 and has been offered at various times since.

Besides this, you made two trips to Cuba at the request of the Government, to revise the railway laws of that country, and declined, as we are informed and believe, to accept a fee of \$5000 which was offered to you for your services in that important matter. Knowing these facts

and others of similar import, and basing our opinion upon years of familiar acquaintance, the idea that you would attempt to defraud the government in the petty ways stated in these charges seem to us simply preposterous.

In conclusion you are assured of the confidence and esteem of every member of the Commission.

This minute by the Commission continues:—

As before stated, during all the time the investigation was proceeding (nearly five months) Mr. Moseley voluntarily remained away from the office, not only that the fullest opportunity might be given to investigate his conduct, from every standpoint, but also awaiting with confidence a complete vindication of his conduct. He has served the Commission and the Government conscientiously for seventeen years, with the single aim of doing his duty to the public and to the Commission, and his self-respect led him to absent himself until he was fully exonerated.

At last, what Mr. Moseley so confidently expected, has taken place. The President, after carefully considering the charges against him, has dismissed them. It has been a trying ordeal, but Mr. Moseley has, during the whole time, been sustained by the consciousness that he was not guilty of any offense against the Government or the public weal, and his whole official conduct was an open book, to which he invited the closest scrutiny and research.

The *Washington Post* made this editorial comment on the case:—

The inquiry into the accounts of Mr. Edward A. Moseley, Secretary and Disbursing Agent of the Interstate Commerce Commission, has terminated in a complete and unreserved exoneration of that gentleman. It is not only that nothing has been proved to his discredit. It is that everything alleged or even suspected has been entirely disproved. Mr. Moseley is left without a cloud or so much as the lightest shadow on his name.

No great amount of wisdom was needed to foresee that termination. When a public official, at the first breath of accusation, hands over his keys, books, papers and property of every kind, and studiously absents himself from the office throughout the entire period of the investigation he has demanded, he at once relieves himself, in the minds of all impartial and judicious men, of the very smallest shadow of suspicion. No one, after that, imagines for a moment that he is conscious of any shortcoming or has anything to fear from the minutest and most jealous scrutiny.

Guilty men do not adopt this course; even men who doubt their ability without doubting their integrity of purpose would hesitate at such radical measures as Mr. Moseley adopted and adhered to. His action meant not only that he knew himself to be honest, but that he knew himself to be capable and efficient as well. No other interpretation on that action is conceivable.

As we have said, the inquiry has resulted in a complete exoneration. Of course, Mr. Moseley's friends were prepared for that, and so indeed were all thoughtful observers of the incident. But the country has a new and shining standard by which to measure future scandals and indictments in connection with Government officials. Let us hope that we shall see more of it.

Mr. Moseley's mail was filled with the rejoicings and congratulations of his friends. Commissioner Prouty, who was absent from the city, wrote, "What I congratulate you upon is, not that the charges have been dismissed, but that your conduct has been such that no other feasible course was open."

"It is almost worth while," wrote Judge Gray of the United States Circuit Court of Appeals, "to have been attacked to be so handsomely vindicated. Of course, I never had any doubt as to the ultimate issue of the investigation."

Mr. Don M. Dickinson, formerly Postmaster-General, telegraphed from Detroit, "Congratulations on complete vindication."

From Mr. Wayne MacVeagh, formerly Attorney-General, came this exclamation: "Over four months and a half to find out that you had not been a grafter on ice and stationery!"

Joseph Nimmo, the statistician, added this observation to his congratulatory letter, "You are also to be congratulated on the abiding trust of the Interstate Commerce Commission in your ability and integrity."

Congressman Hemenway wrote from his Indiana home, "I congratulate you and regret that the Government has not more of your kind occupying official positions."

Mr. W. J. Calhoun, formerly a member of the Commission, afterward Ambassador to China, wrote, "If you have enemies—who has not?—I am very glad their attack only served to make brighter your personal and official record."

Mr. George R. Peck, general counsel of the Chicago, Milwaukee & St. Paul Railroad wrote: "The whole affair was, in my opinion, a disgrace to the civil service of the country, but your complete vindication was, in a sense, a recompense for the annoyance to which you have been subjected."

Mr. Charles S. Hamlin wrote from Boston: "While we all knew the result would be as it is, yet it is a satisfaction to have our golden opinion of you duly verified."

Professor Henry C. Adams wrote from Ann Arbor,

"It seems to place too much importance upon the whole affair, to say to you that I congratulate you upon coming through the ordeal without detriment to yourself."

Yet the suffering Mr. Moseley endured at this time, it is not too much to say, seriously undermined his health and hastened his death. It is a fact that one of the persons who made the false accusations ultimately came to him confessing and begging for assistance, and received it.

Mr. Moseley continued to pay for the privilege of working for Uncle Sam as he had done every year since he took the office. An inheritance from his uncle, William O. Moseley, in 1894, aided him toward building a house in Washington, and finally his share of his father's fortune, which came to him in 1900, brought him a competence.

He, who had no superior in the public service as a promoter of measures in Congress and in the executive departments, saw with indifference the salaries of most fellow officials in Washington, including those of his Commissioners, pushed up 25 and 50 per cent, and did not turn his hand over to advance his own salary from the amount originally prescribed by Congress in 1887, \$3500 a year. The duties and responsibilities of his office had been multiplied many times, but the compensation remained stationary for several years more, and he remained content. He could lobby for others, but not for himself.

When, without his solicitation, a motion was made in Congress to increase his salary, he stood by while a few men at the Capitol, whose antagonism he had aroused

by his aggressive campaigns for legislation, took their revenge on him. Senator Stephen B. Elkins of West Virginia eulogized in vain the disinterested services of Secretary Moseley, whom he had known ever since the organization of the Commission, and whom he pronounced an efficient, able, and faithful official, one having the confidence of all the executive departments and the President. Senator Elkins said in the Senate:—

Mr. Moseley was appointed Assistant Recorder of the Anthracite Coal Strike Commission by President Roosevelt and, at the request of the Commission, became its disbursing officer. All the money expended by the Commission until Congress made provision, which it was doubtful they would do, was provided by Mr. Moseley on his personal security alone, he thereby assuming the great risk of Congress not making any appropriation for the expenditures of the Commission.

During the American occupation of Cuba, at the request of the Governor-General of that Island, Mr. Moseley was sent by the United States Government to assist in drawing a railroad law, to fix a classification of articles of freight, formulate rules of practice, and to fix railroad rates. . . .

For his valuable work in connection with drafting the railroad law of Cuba, Mr. Moseley was informed by those in authority that they would be pleased to pay him some \$5000 out of the revenues of the Cuban treasury, and it was urged upon him that he could properly accept it. Mr. Moseley, however, refused, stating that all his services—time and energy—belonged to the United States Government wherever employed, and that, being assigned to work in Cuba, all he was entitled to was his actual living and traveling expenses.

The Secretary was marked out to be excluded from his share in the upward trend of government salaries.

Congress freely increased the pay of incumbents of sinecures. Had the Secretary of the Interstate Commerce Commission done nothing but plod along in the path of bureaucratic routine, he would have been rewarded without question.

Because he held office not merely for himself, but as a vantage point from which to forward the interests of tens of thousands of citizens, who had no Senators to represent their interests, he was singled out for rebuke and punishment by men who felt no enmity toward him, — but toward his ceaseless demands that the railroads be compelled to give better protection to life and limb and to care for the wounded and for widows and orphans. They had no idea how little he cared whether his salary was \$5000, \$3500, or nothing. If he had really cared, and had employed in his own interest the influences always at his instant command, we may be sure that the increase would have been promptly forthcoming. He accepted the discrimination against him as a distinction, and it actually became a point of pride with him.

At the next session of Congress, the Commission formally and earnestly appealed for an increase in the salary of the Secretary, not only in justice to him, but in justice to subordinates who could not be properly paid as long as their chief was underpaid; and finally the increase was granted. Chairman Knapp's letter follows:—

INTERSTATE COMMERCE COMMISSION, WASHINGTON,
December 17, 1906.

HON. JAMES A. TAWNEY, Chairman Committee on
Appropriations, House of Representatives, Wash-
ington, D.C.

DEAR SIR:

The Interstate Commerce Commission has the honor to submit herewith a supplemental estimate providing for its Secretary a salary of \$5000 per annum in place of \$3500 fixed by the present law.

The Secretary of the Commission is its chief executive officer, and the amended act has greatly increased his labors and responsibility. The present salary is materially less than the proper compensation of such an official and much below the salaries paid, as we understand, to officials of corresponding rank and duties in other branches of the public service. This disproportion is the more noticeable because of the relation of the salary now paid the Secretary to the increased salaries of the members of the Commission under the amended law.

From the time of the creation of the Commission nearly twenty years ago, Mr. Edward A. Moseley has been its Secretary, and the ability and zeal with which he has discharged his duties are matters of common knowledge. He enjoys the confidence and respect of the Commission, and its members are unanimous in asking that he receive the salary named in the estimate. The position itself and the present incumbent alike deserve the full increase recommended.

There is a further reason which we may properly mention. The salaries of the Assistant Secretary and other subordinates are fixed by the Commission, and propriety requires that they be adjusted with reference to the salary which the law fixes for the Secretary. An increase in salary of the Secretary will enable the Commission to properly advance somewhat the salaries now paid to others whose long and faithful service, in some cases almost invaluable, entitle them to increased compensation as a matter of simple justice.

Very respectfully yours,

MARTIN A. KNAPP, Chairman.

CHAPTER XXIII

HIS WORK DONE

THE work Mr. Moseley did in studying, formulating, and promoting the legislation which is his monument, and in defending and enforcing that legislation would have absorbed and exhausted the energies and abilities of a man of normal capacity. Few men would have found the time and strength to do anything else. It represents, however, only one division of Mr. Moseley's activities.

Throughout the years that he was battling for those laws in Congress, in the Courts and all along the more than two hundred thousand miles of railroads in this country, he was faithfully fulfilling his arduous, delicate and responsible duties as Secretary and executive officer of the Interstate Commerce Commission, one of the most exacting posts in Washington, which would have taxed to the full measure the attention and industry of almost any other man. No detail of his obligations to the Commission, the Government or the public was neglected.

Many who were interested only in his discharge of the functions of his office looked upon his ceaseless agitation for protective measures in behalf of safety of life on the rail as a mere side issue, as an amusing diversion or distraction. To them it was "Moseley's hobby," an innocent but unimportant affair.

For the Interstate Commerce Commission was established solely to regulate railroad rates, and its regulation of the conditions of railroad labor naturally was regarded as a digression from its original duty, an offshoot from its main purpose, gratuitously brought about by its Secretary. There have been members of the Commission who had little sympathy with his unending crusade, and who were annoyed by the criticism which his militant methods sometimes provoked among railroad officials. It is a tribute to their forbearance no less than to his consummate tact that he was left free to carry on his various campaigns. It was the silent expression of the Commission's esteem and of its sense of his value.

While much of his propaganda was outside all official bounds and therefore had to be forwarded without involving the Commission, whenever he spoke or acted as its representative, that body loyally stood behind him, and thereby made possible the work he did. There is no purpose in these pages to award to the Secretary any credit which the Commission or any one else is entitled to share with him, although in a personal sketch it would be difficult to avoid giving such an impression. No one can follow his activities, mark the advanced position which he boldly took on many questions and occasions, and note the powerful influences which he successfully combated, without admiration for the confidence and constancy of the Commission in sustaining him.

His personal relations with the Commissioners were helpful and friendly and often intimate and affectionate. The most politic of men, he aided to harmonize their

inevitable differences and secure united action on the questions that came before them. He administered the oath of office to new members and freely opened to them the storehouse of his long experience. It chanced sometimes that he participated in their selection, and was the first to give them the good news, for he was ever vigilant to promote the appointment of progressive men on the Commission.

As early as 1891 he was writing to an absent member on the occasion of a vacancy : —

This Commission is in a mighty lame position. The Chairman will never come here again, I am sure. Virtually there will be two new men coming into the Commission, and that within a short time. It is of the utmost importance that the man appointed to succeed Commissioner Bragg should be a man who has some familiarity with this subject, and that it should not be parceled out to somebody or other, or even to a man who may have won distinction in something else.

The President rarely hastens in matters of this sort, but I am awfully afraid that somebody may get a hold before you can see him and tell him the situation. But, for God's sake, Mr. Commissioner, don't let anybody get into this Commission, if you can help it, that is not going to be an aid and assistance to it! I don't care about myself, but this question is so great and overpowering, that my only thought is that the Commission shall not go down under the trials and troubles which are constantly being heaped upon it, and that, now the opportunity is here, some strong man should be put into the harness, to help draw the load.

This letter is in the strictest confidence to you, and it is only because you are not here. I do pray that you will communicate to the President something or other, which will deter him from taking any hasty action. I am here on the spot, and appreciate everything. For God's sake, do act!

The Secretary's opposition to a candidate for a seat at the Commission table in the McKinley administration took the form of a movement of protest. President McKinley had indicated his approval of the candidacy, but the applicant had a record as a judge which Mr. Moseley regarded as unsuited to a member of the Commission, and he went after him, although he took his official life in his hands when he did it. The President told the judge's friends that if they would see that the objections were withdrawn, he would nominate him, but Mr. Moseley did not yield to the pressure brought to bear directly upon himself as the instigator of the remonstrance, and the selection was not made. The man's transparent unselfishness never failed to vindicate his actions.

In the discharge of the strictly official duties of his office, Mr. Moseley proved himself a most efficient executive. When he became Secretary of the Commission in 1887, it was a bureau of the Interior Department, with a staff of five clerks. He saw the Commission become independent of any department, not far from six hundred and fifty persons on its roll of employees, and the annual appropriation for its maintenance, of which he was the disbursing agent for many years, increased to \$1,800,000.

He saw the files, which he started, grow until they held ten million documents and papers, and the library of the Commission prosper until it was pointed to with envy by the officials of other governments and was rivaled in its completeness only by the far older library of the railroad bureau of Prussia.

As Secretary, he examined every detail of his work, with the purpose of promoting the convenience of the Commission and its staff and the service of the public. Whenever a decision was to be announced by the Commission, the representatives of the press were warned of its coming, in order that all should have a fair and equal chance. A synopsis was then carefully prepared and sent to such newspapers as cared to have it. The opinions were also sent to the parties immediately interested, and in some instances every operating railroad in the United States was served with a copy, under the seal of the Commission and by registered mail. Comparing the system which he pursued with that of the Supreme Court, he once wrote:—

The Supreme Court decisions are declared from the bench. One may go every Monday, which is the day set for decisions, month in and month out, awaiting the court's determination, until patience almost ceases to be a virtue. At last the opinion is rendered orally by one of the Judges. It is weeks afterwards when the full report is obtained, and it is sold to anybody who desires a copy. No service is had. Anybody who wants a decision of the Court goes to the clerk's office and pays for it. Such a thing as a synopsis of the opinion is unheard of.

The Secretary of the Interstate Commerce Commission, who, it is claimed, has an equal right to the perquisites of his office, can truthfully say that anything that the Commission has in the way of papers can be had for the asking. There has never yet been an intimation that any citizen of this country has obtained information in advance of anybody else or has been able pecuniarily to profit by it.

In accordance with Mr. Moseley's conception of public service, everything was made free from the beginning,

and the Secretary never collected a fee or made a charge in any transaction. He declined, as previously stated, even to accept extra compensation for his work as disbursing officer of the Commission. His ideal was to place the facilities of his office freely at the service of the public, with the minimum cost of money and time, using every endeavor to bring the Commission into the closest and most cordial relations with the country.

In the course of his service more than one hundred thousand answers to letters were sent out over his signature. To most of them he gave a personal touch, and the persons to whom they were sent were made to feel that their efforts and wishes were noted and appreciated. United States attorneys have said that their correspondence with him was more satisfactory than their relations with any other department of the Government.

No letter, formally prepared by any of the officials of the Commission, could get by him with an error or blunder in it. His power of instant detection of such mistakes was a gift. When handed fifty or one hundred letters for his signature, he went over them rapidly but thoroughly, and it was almost impossible for a mistake to escape his eye.

He had a wide correspondence outside that arising from the routine of his office, a correspondence in which he exchanged views with judges and lawyers, economists, railroad officials, and the representatives of railroad brotherhoods. From time to time he wrote papers and delivered public addresses on the subjects with which his work dealt. Both these and his letters display not

only the development of his legal learning and his reasoning faculties, but thoroughness and taste in their preparation. When engaged in preparing them he was accustomed to dictating to his stenographer his ideas in the rough, and then giving the copy to one or two of his assistants who were acquainted with the subject. Upon their verification and formulation of his ideas according to their best judgment, he revised and re-shaped the document to suit himself, and then again had the matter put in form. Sometimes it went through two or three hands before it was fully satisfactory.

When it was finally in shape, the product was essentially his own. The quotations and citations in almost all cases were suggested by him, but of course the literal examinations of the quotations at the original sources had been carefully made by others.

A trusted and loyal member of the staff has drawn this picture:—

Mr. Moseley's methods of work were indirect and somewhat peculiar. He seldom went at a thing in such a way as to disclose to his assistants just what he was doing. In the initial stages of his work for the accomplishment of a particular object, it was his custom to have several persons at once working out his plans, each entirely ignorant of what the others were doing, and all completely in the dark concerning his object.

He would come to me, for instance, and tell me to do a certain thing, perhaps involving considerable research, such as digging through the Commission's statistical reports or foreign reports, without giving me the faintest idea of what he wanted to show or the purpose for which he desired the information. After taking the matter up and working on it for perhaps a week or more, I would

be very likely to discover that several other persons were working on the same thing, all as much in the dark as myself, and all entirely ignorant of the fact that others were doing the same thing as themselves.

This method of work was rather exasperating at times, and I was never quite able to adjust myself to his point of view. I suppose he reasoned that results obtained in this way were more likely to be accurate, because they would not be affected in any degree by the personal views of the workers, and one man's work would check another's in such a way that errors in the final result would be practically eliminated. At any rate, it did not set very well at times to find, after turning in the result of several days' or weeks' close work, that five or six other persons had been doing the same thing as yourself (only perhaps in a different way) and you had not known a thing about it.

Mr. Moseley was a keen observer, and had a most remarkable memory. His faculty of going over a written page and getting the meat out of it almost at a glance was almost uncanny. This was especially true of court decisions. He would run through a decision in a case which interested him almost as fast as he could turn the pages, and when he was through he could tell clearly just what the decision contained.

Perhaps months after he had run through a decision in this apparently cursory and hurried manner, some other case would be brought to his attention, involving the same or similar points. He would then remember the former decision and cite its essential features almost word for word. Time and again have I heard him, when in consultation with the Commission's attorneys about important features of court decisions, cite to them decisions made months, or perhaps years, previously—decisions that bore with compelling force upon the points under discussion—and when they were looked up it would be found that his memory of them was absolutely accurate.

When working to secure an end which he had set his heart upon, he used every instrumentality that came to his hand, which promised in any degree to aid his purpose, irrespective of his personal likes or dislikes. In that respect he was certainly a remarkable man. He would

cheerfully and persistently work with men for whom he had the utmost contempt if he thought that by placating them they could in any degree aid him in his work.

Time and again have I known of his enduring snubs from petty-souled individuals, and taking without apparent resentment actual insults from men who were not worthy to wipe his boots (so-called leaders of the workingmen whom he labored to serve) rather than break with them and thus lose their influence for his measures. He has even let it be thought that such men were more entitled to credit for his measures than he himself! He never broke with any man, no matter what the provocation, as long as he needed the assistance of that man in any degree for the accomplishment of his purpose.

On the other hand, he seemed to forget his friends, if their friendship was likely to injure his measures. I have known him to ignore men for whom he had the highest regard, when the circumstances were such that any particular show of cordiality for a certain individual might have influenced the action of another man, of whom he perhaps thought lightly, in a way to jeopardize a bill for which he was working. In short, his work was impersonal to a greater extent than that of any other man I have ever known.

He had strong likes and dislikes, naturally, and would do anything in the world for a friend, but in performing his work he picked his instruments without reference to their character, affiliations or disposition toward himself. And his judgment in picking the right instruments was almost perfect. In all my association with him I never knew him to be deceived in a man.

An able and intimate associate has drawn this sketch of Mr. Moseley at work:—

I wish I could give you a vivid picture of how he did his work: how in the early morning before coming to the office he would call on such officials and public men as could be of service in formulating sentiment and public opinion upon the matters in which he was interested . . .

how he took home with him to his room and went over not only the particular problems of the Commission, but those broader questions of public interest into which the Commission work dovetailed, and studied them until late into the night, or discussed them with some co-worker until from sheer fatigue he dropped into slumber.

Of course he worked too hard. His energy, which was dynamic, was used unstintingly and ungrudgingly in the consideration and development of the advanced problems of this generation.

When he first took up his work in 1887, Mr. Moseley was in vigorous athletic condition. But his rugged strength and health began to break, under his unsparing demands upon them, a dozen years and more before his death. For the last four years, it might be said that he faced death in a hand-to-hand fight. But, deaf to the anxious entreaties of family and friends, he never relented and never gave up while it was possible for him to stand. One or two brief outings only gave him some respite, and he enjoyed a trip to Quebec and St. Anne de Beaupré, which he took with his brother-in-law, Otis Livingston Prescott, as much as he had enjoyed a trip to Europe in the early seventies.

Some letters among his papers which were called out on the occasion of his first serious illness, when he had gone to his Massachusetts home to recuperate, testify to the tender solicitude of the Commission. The Chairman wrote him :—

INTERSTATE COMMERCE COMMISSION WASHINGTON,
September 25, 1907.

MY DEAR MOSELEY :

The telegrams received yesterday afternoon and to-day have given us all the greatest pleasure.

We were certain that the newspaper reports were grossly exaggerated, but these reports were so persistent that we felt some anxiety, which was happily removed by your encouraging messages.

Let me repeat what I wired you yesterday. Give yourself up to the business of recovering with the same confidence and singleness of purpose that you always bring to the discharge of your official duties. Do not allow any distress of mind about office matters to stand in the way of your speedy restoration to health. We will all do the best we can without you and only ask that you accept the situation with patience and hopefulness. That is the unanimous and earnest sentiment of the entire office.

I have taken up with the architect the matter of our hearing room and am to have another interview with him to-morrow. Clements and Clark will be here, and we shall have the benefit of their suggestions. I am sure we shall have a very dignified and satisfactory place in which to conduct our public hearings.

What you say about the National Convention of Railroad Commissioners is at once correct and important. I think it is a great opportunity to avoid friction, promote uniformity of policy and action, and so perform a distinctly useful public service. I shall urge my associates to show their interest in this gathering and intend to be present myself at all the important sessions. . . .

Give my kindest regards to all your family and accept for yourself the assurance of my constant and unaffected friendship.

Yours very truly,
MARTIN A. KNAPP.

This letter from Commissioner Harlan was found among Mr. Moseley's papers:—

WASHINGTON, October 1, 1907.

DEAR MR. SECRETARY:

I reached Washington Saturday night, but came to the office for the first time this morning and then found your note of the 27th, which was forwarded to me here from

Essex. I was very glad to hear from you and especially to know that the specialist from Boston has given you so favorable an account of your condition.

It seems to me that we were all of us lacking in consideration in not insisting upon your taking a long vacation, as the rest of us did. You ought not to have come back to Washington at that time. I hope, however, that you will take a good long rest and will not think of returning to your desk until you are thoroughly recuperated. You certainly are entitled to this, and I am sure that it is the sensible thing to do.

Although we shall miss you, as we always do when you are absent, I am sure that my colleagues will wish you to carry out this suggestion. I know of no change or readjustment that is contemplated in the office force or assignment of rooms that has not already had your attention. If any changes are suggested, they can very well wait until your return.

You will of course be very much missed at the National Convention of Railroad Commissioners. . . .

Please give my best regards to Mrs. Moseley, and believe me, as ever

Your sincere friend,

JAMES S. HARLAN.

HON. EDWARD A. MOSELEY,
Deer Island, Newburyport, Mass.

P.S. If there is anything, officially or personally, that I can do for you during your absence, please do not hesitate to let me know. It will be a pleasure to be of service to you.

It is pleasing to quote another letter from the Chairman, written later in Mr. Moseley's absence:—

WASHINGTON, October 18, 1907.

MY DEAR MOSELEY:

It gives me the greatest pleasure to learn from your letters and otherwise that you are making rapid recovery and looking forward to an early return to your work.

You are greatly missed, and it will be a day of delight

when you come back to us. But, my dear friend, let me advise you to take time enough, while you are in that line of business, to get thoroughly well before you again put on the official harness. There is no chance that the job will be finished during your absence; it will last long after you put your hand to it once more, and most likely be bigger than it is now when you and I are both released from its burdens permanently.

Be good to yourself for a while, as you have so long been good to every one else, and give to yourself the rest of body and mind which you have so faithfully earned. In all things you have my unaffected sympathy and friendship, and I am always

Your sincere friend,

MARTIN A. KNAPP.

The last step in the Federal regulation of car appliances for the safety of trainmen was taken on April 14, 1910, when the President signed an act of Congress looking to a uniform equipment of all cars. This marked the completion of the work for safety appliances which Mr. Moseley began twenty years before.

Under the operation of the Act of 1893, the first bill which he championed and the first assertion of the power of Congress to regulate the conditions of railway labor, all the hundreds of thousands of cars in the country had been equipped with automatic air brakes and uniform automatic couplers. Under the Act of 1910, the Interstate Commerce Commission was empowered and required to prescribe and dictate every other detail in the equipment of a car.

To-day no car can be hauled on a railroad engaged in interstate commerce unless it has automatic couplers and air brakes, and henceforth every new or rebuilt car

must conform to all the other standards set up by the law and the Commission. In the course of a short time a brakeman or switchman will be secure in the assurance, as he goes about his work in the darkness of night, that all cars, whether from Maine or Oregon, Montana or Florida, will have grab irons in one certain position, all ladders will be in the same place and with the same number of rungs, all sill steps will be just so far from the ground and no higher, and all running boards exactly the same width.

By July 16, 1916, the standardization of the cars must be completed. No more will the trainmen be required in the night to hazard life and limb on the guess as to whether the ladder is on the end or the side of the car, whether the sill step is two feet or three from the ground, or whether the running board of the next car is broader or narrower than the one from which he leaps as he races over the swinging, jumping train. Poor guessing of one kind and another cost six hundred and sixty-six railroad employees their lives in one year and brought injuries to fourteen thousand eight hundred and sixty-nine others. Hereafter, by the law's command, all cars will be constructed in these respects precisely alike, and the cars of every train must be twenty-four inches apart when coupled and moving. No detail of the conditions surrounding trainmen is now left to chance.

When the Commission held its hearing in October, 1910, for the discussion of the proper regulations under this last law in the remarkable code of useful statutes which Mr. Moseley had done so much to construct, he

was mortally ill. Against the warning of physicians and the pleas of those about him, he took an active part in a long session in the hearing room of the Commission, determined to finish his work. There he fell at his post of duty, "collapsing," as the press dispatch of the day reported, "in the very hour of winning his twenty-year fight."

He had loyally and gladly spent the last ounce of his energy in behalf of the good cause, to which, in the vigor of his prime, he had dedicated his life, and in his home at Washington under the loving care of his wife and his daughter, Katherine Prescott Moseley, he uncomplainingly awaited the end, which came on April 18, 1911, less than a month after he entered his sixty-sixth year. "His patience and sweetness under his long suffering," a dear friend has recalled, "were infinite and filled his nurses and his indefatigable and great physician, Dr. Philip Roy, with wonder and affection. At 9 o'clock the last night he discussed the points of a Supreme Court decision, holding the pamphlet; at five the next morning, with his hand beneath his cheek, he fell asleep."

His death called out many words of regret and praise from the press and from public men. On the occasion of his funeral at historic St. John's church in Washington, the railroad workers of the United States by delegations and floral offerings expressed their sorrow over the death of their champion, a sentiment which at subsequent National conventions they entered in their records by the adoption of resolutions. The Interstate Commerce Commission recorded as a body the heavy

sense of loss that each of its members felt; and from societies and individuals all over the country messages of sympathy came to the bereaved family.

Mr. Moseley's life was at a low ebb when he had insisted on leaving his loved retreat at Deer Island in the fall. But the ruling passion was strong as ever, and, paying no heed to his duty to himself, he had hearkened to the old call of duty to others.

Now his tasks were done, he was borne home again; the prayers were said and the songs sung in old St. Paul's at Newburyport, where when a boy he was confirmed, and the wearied body rested at last by the shores of the Merrimac.

CHAPTER XXIV

A BROAD-GAUGE AMERICAN

MANY wondered when they saw Edward A. Moseley, with eight or ten generations of Puritan ancestry stretching behind him, selected President-General of the American-Irish Historical Society, while many others, who knew nothing of his New England background, assumed he was a product of our recent immigration.

Mr. James Jeffrey Roche said that Mr. Roosevelt, in a friendly talk early in his term, bracketed him and Mr. Moseley together as "you Irish Catholics." Apparently the President had not guessed then that the President-General of the American-Irish Historical Society was quite as old an American as himself, and had been born into the Protestant Episcopal church. Indeed, his mother's father, Rev. Dr. Chapman, was sufficiently distinguished among the learned clergy of that church to receive the favorable attention of Cardinal Newman in his "Essays Critical and Historical."

It was very like Mr. Moseley not to be content to prove his eligibility, by right of descent, to membership in the Society of Colonial Wars, the Sons of the Revolution and the Society of the Cincinnati, but also to search out proofs of his qualification for admission to the Charitable Irish Society of Boston and to the Ameri-

can-Irish Historical Society. In the beginning, his interest in this branch of his ancestry probably was a part of his loyalty to O'Reilly, but he broadened it into an expression of his instinctive antipathy to all racial narrowness.

"My descent," he wrote, "from Irish ancestry, of which I am justly proud, and also from the English and Welsh, not only enables me to regard myself as among typical Americans in respect to origin, as well as aspirations and pride of country, but renders me fondly sympathetic with the aims and purposes of this American-Irish society. The main purpose of the American-Irish Historical Society is to elucidate the history of the Irish element of our people and the extent of its contributions to our development and civilization since the earliest colonial period, a rich and greatly neglected field for historical research."

He found that he was ninth in descent from Lieutenant Thaddeus Clarke, a native of the north of Ireland, who was sent to Portland, Maine, in 1690, in charge of a small body of troops. In one of the fights with the Indians, Lieutenant Clarke and twelve of his men were led into ambush and killed. He was also eleventh in descent from George Cleaves, who he believed came from Ireland, and who was the original founder of the town of Falmouth, which is now a part of Portland.

Mr. Moseley was proud of his election as the second President-General of the American-Irish Historical Society in succession to Rear Admiral Richard W. Meade, U.S.N., in 1897, and of the honor of reelection to that

office. On first taking his place, he delivered a carefully prepared and able address on the services of his predecessor, Admiral Meade, and on the general subject of the Irish influence in American history. An interesting service which he performed while President-General is recorded in the following letter:—

AMERICAN-IRISH HISTORICAL SOCIETY, Office of the President-General, Washington, D.C.

June 27, 1898.

T. HAMILTON MURRAY, Esq., Secretary-General, American-Irish Historical Society, Providence, R.I.

DEAR MR. SECRETARY-GENERAL:

I regret exceedingly that I shall be unable to be present at the outing of our society at Newcastle, having just returned from an official trip to the Pacific coast, where I have been since the 25th of last May. I particularly regret this, as I have been looking forward to it with a great deal of anticipation, it being usual for me to come home by the last of June.

Sometime ago, at the happy request of my friend, Mr. M. E. Hennessey, of the *Boston Globe*, I urged upon Hon. John D. Long, Secretary of the Navy, the propriety of naming some vessels, about to be built, for three naval heroes of Irish stock, Commodore John Barry, Commander Macdonough, Captain Jeremiah O'Brien, that it would be but a proper recognition of the Irish element which had taken so prominent a part in our navy of the past. At the time I received his assurance that he would see what could be done, and it resulted in his determination to call two torpedo boat destroyers *Barry* and *Macdonough*, and a torpedo boat *O'Brien*, all about to be built. I inclose a memorandum of the dimensions of these vessels.

My request to the Honorable Secretary was made as President-General in behalf of the Society, and I feel that the formal thanks of the Society are due to Governor Long for his cheerful compliance with the request. At

the same time it should not be overlooked that the suggestion originated with our friend Mr. Hennessey. Should the Society see fit to recognize Secretary Long's action, I should be pleased to communicate its thanks to him. I am,

Fraternally yours,

EDWARD A. MOSELEY, President-General.

Another recognition of his breadth of spirit, which pleased Mr. Moseley, was his selection, in 1907, to serve on a distinguished committee, representing all creeds, charged with presenting a portrait of Cardinal Gibbons to the Catholic University in Washington. In accepting the appointment, he wrote:—

I consider it a very high honor to be selected as a member of such a committee and thank you most heartily for suggesting my name in that connection. I respond the more readily to your request for the reason that I hold His Eminence in the very highest respect.

Situated as I am here in close proximity to His Eminence, it has perhaps been my good fortune to have an exceptional opportunity to observe and admire his admirable traits of character. I am a profound admirer of his intense Americanism and the enthusiasm which he displays in the advancement of every good cause. Independently of the high and honorable position he occupies in his great church, I consider that he stands among the very highest of our citizens and is entitled to the love, admiration and respect of all men.

With his active membership in the American-Irish Historical Society, Mr. Moseley was a no less loyal member of older patriotic, historical, and sociological organizations. He was on the standing committee of the Massachusetts Society of the Cincinnati; a member of the Sons of the Revolution; of the Society of

Colonial Wars, of which he was Chancellor; of the Bunker Hill Monument Association; of the Merrimac Humane Society; of the American Association for Labor Legislation; of the American Association for the Advancement of Science; of the American Political Science Association; of the National Geographical Society and American Economic Society. He was besides a member of the Metropolitan, Army and Navy, Chevy Chase, and Cosmos clubs of Washington.

In a little talk at a dinner of the Cincinnati in Washington, it was characteristic of Mr. Moseley that he should have dwelt, not on the pride of lineage, but on democracy as the great legacy of the Revolution to all Americans, share and share alike:—

Happy was the idea which has resulted in bringing together on this occasion those of us residing at the nation's capital. Although we are very properly denied the privilege of being a society as of the thirteen original states, we can meet together as a committee, forming and cementing those friendships which it was the purpose of our fathers to perpetuate.

They were the leaders in our struggle for independence, who not only risked their lives upon the field of battle, but also the punishment meted out to traitors. They left to us a heritage of glory which it is our duty and privilege to maintain, not in vain boasting of our fathers' deeds, not in seeking social rank, and, least of all, in no offensive assertion of superiority of birth.

Neither exclusiveness nor gradations of social distinction, but democracy and the brotherhood of man, is the lesson our fathers taught and which we, their loyal sons, should manifest and teach. No prestige or applause is due to us for what our fathers dared and did. The glory is theirs alone. Responsibility alone is ours, that our generation may not impair their glory or their work.

The result of their work for the welfare of humanity must not be dissipated.

The inheritance of their glory is not ours alone; all Americans share it. Every faithful and patriotic American is an heir of the Revolutionary fathers though he may be of foreign birth and recent arrival, if he takes up the duty and responsibility of citizenship in their spirit of devotion to the welfare of all.

The only true way in which we may share the glory of our fathers is by devoted adherence to their broad democracy; by aiding in our generation the uplift of humanity and by jealous guardianship of the government they created, lest its benefits be dissipated.

If their work is to be immortal, and we of all men do not doubt it, the ark of the covenant of the Nation's liberties must be safeguarded in each generation. It is for us to see that we are aligned in the ranks of freedom's preservers, if we would be worthy descendants of those who established liberty.

And especially must we remember that the foundation of the works of our fathers was the imperishable principle that all men are created free and equal. Government is not by the select for the select. All the people know more than some of the people. All the rights and interests of all the people must not be submerged in protecting some of the rights of some of the people.

This seems to me the lesson they teach in the present hour. In the hearts of all the people, especially of our statesmen, should be implanted the seed of universal brotherhood. Let us, then, fulfill our duty to our fathers by a performance of duty as we find it day by day. Let us draw no lines of race or creed, or of the "guinea stamp."

With benevolence to all and pandering to none, by kindly deeds, pure thoughts and honest zeal, let us serve our fellow men. Thus we shall honor and perpetuate the principles which justify our being.

In the closing year of his active life, the University of Notre Dame, one of the oldest of the institutions of higher education in the Middle West, conferred on Mr.

Moseley the degree of Doctor of Laws, a recognition of his work which brought him much satisfaction. Going to the seat of the University at Notre Dame, Indiana, he received the degree on June 13, 1910, Governor Marshall of Indiana, who was among those so honored on the same day, delivering the principal address.

The director of studies made the announcement of Mr. Moseley's degree in these words: "A humanitarian who has employed the powers of his great office for the protection of human life, whose work as Secretary of the Interstate Commerce Commission for twenty-three years has been marked by energetic and sustained devotion to official duty, to whose beneficent activities the industrial as well as the traveling public are debtors, and whose freedom from self-seeking is such a noble example of patriotism."

Mr. Moseley received the degree from the hands of the Papal Delegate to the United States, now Cardinal Falconio. His new honor brought him many pleasant words of congratulation. As he was leaving Washington for Notre Dame, President Taft jokingly asked him to tell the faculty that he had always entertained the very highest opinion of their university until he learned they were about to confer this degree.

Dean Mussey of the Washington College of Law wrote to congratulate Mr. Moseley, saying, "The reasons for granting it (the degree of Doctor of Laws) are of the highest and have been well earned by you. The Washington College of Law congratulates you on this latest honor and congratulates itself that you are willing to assist us as a member of the lecture corps." Judge

De Lacy of the Washington Juvenile Court wrote: "It is an honor well bestowed upon a gentleman who is well versed not only in the theory of the law, but in its actual working between man and man. You are entitled to receive this degree from the university of experience as well as from a university of letters." Mrs. Harriet Prescott Spofford, his sister-in-law, wrote, "It is a real crown to your work."

In an editorial comment, the *Springfield Republican* said: "He has been a good friend of the railway employees in Washington and of the railways as well, when the broad view is taken. Long service is behind the conferring of a degree that is stretched to meet all sorts of demands."

Specially pleasing was the letter from Father Cavanaugh, head of the University, in which he said to the new honorary alumnus: "You carried away with you the affection of all at the University. I never knew anybody to capture so completely the hearts of all."

A railway workman wrote to the University to thank it for recognizing the friend of the railway workers, than whom "there is not a man in the world who has done more for the advancement of the welfare of the man who labors with his hands." Among Mr. Moseley's papers this copy of a communication on the subject was found, but with no name attached:—

OUR NEW COLLEAGUE:

From the fo'castle of the good ship *Amarintha* to the sublime degree of a Doctor of Laws: long stretch of life full of altruistic effort!

No man has, in these United States, done more for a peaceful solution of the relations between master and servant than this new Doctor of Laws, because he recognizes that the science of laws deals not with concepts, but with things or facts and not with talk about facts. The distinction between the two is the recognition between realities, combined with human sympathy, and the formal twaddle of the school-trained lawyers, who somehow get on our benches. Human sympathy seems to be the key to the solution of his public success, while from the private side, a complete lack of envy of the achievement of others is his great characteristic.

Long life and continued success in his self-appointed task !

CHAPTER XXV

A RECORD OF FRIENDSHIPS

UNLIKE many strong men, Mr. Moseley's strength was proved by his friendships far more than by his enmities. To be sure, he made enemies as well as friends, but he never remembered the former and never forgot the latter.

His life is a record of friendships with all manner and conditions of men. If assembled together, they would form an extraordinary social medley, for there never was the faintest trace of a class line drawn between them by him. He had no use for any subdivisions of the human family. It was with him, as his friend O'Reilly said of Edmund Burke : —

Races or sects were to him a profanity,
Hindoo and Negro and Celt were as one,
Large as mankind was his splendid humanity,
Large in its record the work he has done.

The man was filled with the spirit of helpfulness, and no one could ask for or have a more loyal and effective friend at court. He was always ready to make the interests of others his own, and superior to his own. There was nothing within honor that he would not do for another ; he seldom had anything to ask for himself.

In the easiest and commonest form of generosity, he gave away no one knows how much money, and he least

of all, for he gave it freely and with never a thought of what was left. But with every such gift he gave something dearer and rarer than money — himself.

He was constantly appealed to and forever giving his time and influence in behalf of those who stood in need of his service. The need was the only test; it made no difference if the man was a stranger, or more than a stranger, a one-time enemy. One who, in blindness of soul, was brutally cruel to him in his boyhood, came to him in after years in need of his assistance and received it ungrudgingly and instantly.

A favor seeker at his office, who, in a moment of passion and disappointment, called him "a liar," was promptly knocked down, though half his age and twice his weight, and then he received "first aid" from the hand that felled him, and, finally, the favor he sought.

A friendless Swede, a common soldier, having been thrown in the guardhouse for his ignorance of formalities in appealing to the Secretary of War for his discharge from the army, Mr. Moseley no sooner heard of the poor fellow's plight than he dropped everything to gain this stranger's liberty. Learning that the Secretary, Mr. Endicott, was absent from the department for the day, he could not wait for his return, but hastened to his house and laid the case before him. Secretary Endicott, being accustomed to such appeals, did not at once share his visitor's excitement over the arrest of the soldier, and coolly promised to have the proper authorities investigate the matter when he returned to his office.

"But, Mr. Secretary," Mr. Moseley urged, "the man

will be lying in that guardhouse all the time, and for no other offense than having dared to address a simple letter to you! And you did not resent his writing you, but referred it to the commandant of his post for a report on the merits of his request, and this brass-buttoned understrapper in his offended dignity has locked him up."

Thus he persisted, until he had communicated some of his warmth to the Secretary. When he came away at last, he bore with him a peremptory order from Mr. Endicott, which before night unlocked the prison door five hundred miles away, and permitted the surprised prisoner to rejoin his comrades in the barracks, a free man.

Any one, native or foreigner, black or white, could touch Mr. Moseley's heartstrings and call into action all his force. Some one told him the story of Ung Wah, a cook in the navy, locked up in the naval prison as a deserter. He brought the case of this Chinese before the Secretary of the Navy at once, and asked for his release. He argued in vain. He pleaded that this foreigner could not understand the significance, force and effect of the naval regulations and should not be imprisoned. But he made no impression, and was informed that there were many other Chinese who were in prison for the same offense.

Still he did not give up the fight for the prisoner. Reflecting upon the subject with close concentration, as was his wont, the idea came to him that as the Chinese could not be naturalized and could not be citizens, this man could not take a valid oath of allegiance. Yet the taking of the oath was a condition precedent to entering

the army and navy of the United States, and therefore Ung Wah's enlistment was void ! He never was lawfully in the naval service, and could not be imprisoned for deserting the service into which he never had been legally sworn. The ingenuity and the force of this argument were effective, and Secretary Long released Ung Wah and several other Chinese who were serving sentences.

Ung Wah, on his liberation from prison, opened a restaurant in Washington, became a real estate owner and prosperous merchant, remaining to the end a grateful and faithful friend of the man who had so successfully befriended an unknown alien. The following letter gives additional evidence of Mr. Moseley's interest in the Chinese : —

September 21, 1909.

MR. A. T. STEWART, Superintendent of Schools, Franklin Building, Washington, D.C.

DEAR MR. STEWART :

The bearer of this is Lee Jin, a young Chinaman, who has been in this country for about six years and whose father is a Chinese merchant. He came here for the purpose of obtaining an education, and I have taken much interest in him. He has, as I understand, passed the 8th grade, and is now just entering the Business High School.

Lee Jin has an aptitude for mechanics, and, after consultation with Dr. Hardesty, we think his interests would perhaps be advanced by transferring him to the McKinley High School, and it is with this purpose that I write you. He is an intelligent young Chinaman, is ambitious, and has a desire to acquire a knowledge of machinery such as we understand a course in this school would give him.

Will you kindly look the young man over, and make such arrangements as you may deem wise ?

With great respect,

EDWARD A. MOSELEY.

A Greek boy, detained at an immigration station, was about to be deported, when Mr. Moseley heard of the case from a friend. He labored so ardently with the Secretary of Commerce and Labor and with the Commissioner of Immigration that the order of deportation was reversed and the gates of the land of promise were opened to the stranger, who made it his first duty after being permitted to step upon American soil, to write a grateful letter to the author of his good fortune. The letter was in Greek, but Mr. Moseley took the trouble to have it translated, and he replied to it with some sound and useful counsels to the new American.

There is a characteristic touch in this letter to a Virginia colored woman, the mother of one of his servants, to each of whom he always stood as a friend rather than a master :—

October 1, 1909.

MRS. AMANDA GORDON,
Prospect, Va.

DEAR MAMMY :

Carry tells me that you would like some alcohol for rubbing. I therefore take great pleasure in sending by express a quart, which you should get at once, and I hope it will do you a great deal of good.

Carry is a good girl, and we all think everything of her. I am very glad to do anything for her dear mother that will please her. She is often telling us about you and how much she thinks of you. You know I have always wanted you to come up here and make us a visit, but somehow or other you have never done it.

I am sorry to hear that you are not well, but hope this letter will find you better.

Sincerely yours,

EDWARD A. MOSELEY.

He was as quick to give his seat in a street car to a poor old negro working woman as to any member of her sex. In his own freedom from race prejudice, he so far underestimated the strength of that feeling in others as to challenge the color line on Southern railroads. He resolved on an effort to enforce the "civil rights" of the colored man in Pullman cars south of the Mason and Dixon line. Two inspectors were sent, with one of the colored messengers of the Commission, to get evidence of discrimination, and they plunged into the very heart of the black belt. They found the discrimination without any difficulty, but they did not find it an easy task to escape with their lives after insisting upon Pullman accommodations for the messenger, who, a member of the staff says, "almost turns white to-day when any one suggests a repetition of his trip."

In a letter to an old friend living abroad, Mr. Moseley gave this hint of the philosophy which so largely governed his life: —

You say that I do not tell you anything about myself. I presume I am the same Ned Moseley you used to know, only a little older. I must say that time has dealt kindly with me, and I feel most of the time as young as I ever did. The only way I am reminded of my advancing years is by my being reminded ever and anon of my old friends dropping off.

Everything is going very pleasantly with me. You know I have devoted my life to the interests of the man with the patched trousers and have been quite successful. . . . It is a very comforting thought that this work has saved many a poor devil from death or injury and kept many a good right arm to support a family; but

the espousal of the cause of the "under dog" is not productive of great honors in a material sense.

However, if the world is a little better for my having lived in it, I am satisfied. I have sometimes thought that if I had devoted the same time and energy to fighting the cause of the corporations, my material benefits would have been greater and the reward more substantial; but I have never regretted my choice.

CHAPTER XXVI

THE MANY-SIDED MAN

To portray Moseley the man would be a difficult task and one for which this pen at least is confessedly unequal. The elements were so mixed in him, his nature and his interests so various, that his oldest and closest friends were always making surprising discoveries of unsuspected traits and talents, until they no longer smiled at John Boyle O'Reilly's proud boast of his friend, "Ned Moseley can do anything that any man can do."

Reticent and often preoccupied at a casual meeting, simple and modest in every relation, most persons could see no more than one side of the man; few, if any, knew all of his many sides.

His gift for concentration and his boyish enthusiasm enabled him to take up any duty or pastime and pursue it as if it were his only object in life. It was this quality which deceived mere acquaintances into believing that they had taken the full measure of the man when they had seen but a fraction of him. Those who saw him at his sports might easily believe he was only a sport; not a few who saw him carrying on his fights for labor laws supposed he must have come up from the ranks of labor; they who saw him so enthusiastic and effective in any one of his several little worlds in which he delighted to make

excursions, were likely to believe that it was his whole world. And, for the time being, it was.

One of his earliest excursions was into the world of sports, where he labored as diligently to develop skill and win success as in any field he ever entered. Horses, dogs and even gamecocks engaged his attention at one time. Athletics became his chief interest later, and he gained rank among amateur swimmers and boxers, and was a good swordsman. He was a leading member of the old Cribb Club of Boston in its heyday. This was an athletic organization with a clubhouse on Avery Street, and with some of the foremost names of Boston on its membership roll.

In his life of the poet, O'Reilly, James Jeffrey Roche noted that the club had been named after Tom Cribb, a noted English boxer, and described it in these terms:—

The Cribb Club, founded for the encouragement of the "manly art," was one of the most exclusive in the exclusive city of Boston, numbering among its membership, men distinguished in art, literature and statesmanship. They were strong, brave, honorable men who loved the natural virtue of courage as much as they hated the cowardly custom which has made the knife and pistol a reproach to the American name.

O'Reilly and Moseley were among the best boxers in the club. An old-time habitu  , in calling up the memory of that "gentleman's club where gentlemen could meet and, in all the panoply of the prize ring, pummel one another to their heart's content in accordance with the Marquis of Queensbury rules," has set down these few recollections for this book:—

I well remember holding the watch for an event between O'Reilly and Moseley, and there were no love pats about it either. Both men were stripped to the buff. The blows came hard and fast, and were given with all the strength the combatants could muster. So far as appearances went for anything, it was a genuine contest of skill and muscle. Of course it was a draw. The few present behind locked doors could not decide any other way. For really, it was one of the prettiest boxing matches you would see anywhere, even in professional circles.

I recall a legend of Moseley stepping into a contest with a professional out at a big picnic. The gentleman amateur, as might have been expected, got the worst end of it, but he simply did not know when he was whipped, and the event had to be called a draw. Out of the ring as well as in, Moseley was one of the best and squarest of men, and he was never known to turn his back on any appeal which came to him, no matter how humble the source, nor how insignificant the object.

Mr. Moseley himself in his sketch, "John Boyle O'Reilly, the Man," made this record of his boxing experiences with his friend:—

One afternoon on going up to the *Pilot* office, he said: "Dear old man, I have been working so hard! Let us go down to the club and I will throw some of this blood out of my brain into my arms and fists." We went down, and, stripping for it, jumped into the ring. It commenced gently enough, but in a short time we were both thoroughly aroused. It was a contest of strong men who were there to give and take. At last it became apparent that one or the other of us must go down. It meant a "knock out."

The veteran, Tim McCarthy, who was professor of sparring at the club and who had charge there, seeing the turn of affairs, sang out "time," but neither of us heeded it, and he jumped over the ropes and with a touch separated us. It was the last time we ever put on the gloves for a contest, although O'Reilly had a playful

way of slipping up and giving me a clip almost forcible enough to knock an ox down. It was play, but it was earnest play, as everything was in his life.

Nothing so inculcates self-control as sparring. The humiliation of a blow is hard to eradicate, but a boxer quickly realizes that it is essential not to lose his temper, no matter how hard hit. A man who can receive a blow in the face and preserve his equilibrium, is not apt to get angry, although he may simulate it, when called out of his name; neither, if he is a sparrer, conscious of his power and skill, does he feel called upon to whip the aggressor to prove himself not a coward. He would despise himself for striking one whom he felt was his inferior, while the knife and pistol have no place in his armament.

As to boxing in general, Mr. Moseley wrote in his sketch:—

The sparrer must have his telegraph system in perfect order. A break in the circuit means disaster. With his eye fixed upon that of his opponent, he notices that he is sending a message to his brain. His own response must be as nearly instantaneous as electricity. A telegram to the brain announces that here is a blow coming or an opening, and as the eye telegraphs to the brain the impending blow or the opportunity to deliver one, so the brain sends notice to the arm to "get at it," — "ward" — or "strike," as the case may be, while at the same time this is supplemented by a signal to the legs to get under way, ahead and astern. Many of us are inclined to wool-gathering, but when in front of another man we must concentrate our thoughts, if never at any other time, or suffer the consequences.

Recurring to Mr. O'Reilly, Mr. Moseley wrote:—

He always entered into every sport with the heartiest enthusiasm. He did not have the slightest sympathy for a man in full vigor who could not take as well as

give a blow. In his sparring he was like a whirlwind. We often sparred together, but after a while, with tacit consent we seemed to drop it; there was too much earnestness in it. I never sparred with him when I did not feel that I could expect no quarter, and that one or the other would have to go down.

The two men fenced as well as sparred, and Mr. Moseley made this report of his encounters with O'Reilly in the former field of friendly combat:—

Again, he was a skilled swordsman. He told me that when he first came a fugitive in this country he thought he would maintain himself by giving lessons in broadsword, single-stick, and foils; and it used to give him great pleasure to put a foil in my hand and say to me—for I professed to know nothing of it—"Ned, on guard! Now run me through. Thrust me anywhere you can. Kill me if you can." And then with a smile upon his face he would ward off my lunges until, suiting his purpose, he would send my sword flying across the room.

Canoeing, that primal aquatic sport of America, was another form of recreation which Moseley enjoyed sometimes with Sigourney Butler and Dr. Guiteras and often with O'Reilly. He and O'Reilly made many happy voyages together, on the Charles, in Boston Harbor, and on the Merrimac, and once they paddled through the Dismal Swamp of Virginia. Another quotation from Mr. Moseley's sketch is appropriate here:—

Always in our outings O'Reilly and myself kept an accurate account, which we balanced every evening. It was simply a matter of method and pleasure to do so. I might say: "Boyle, you know you bought a quart of milk to-day; you haven't got that down;" or it might be, "You gave a quarter to that lock tender;" or he might say, "Ned, you bought some bread and cheese at

the grocery at such a place, or we paid so much toll, or something of that sort," and then after marshaling all the expenses, we would divide them. It was purely method on his part. No man was more liberal in his expenditures, but he did not like to be under obligation even to a friend.

An incident of one of their trips was thus recalled by Mr. Moseley: —

I remember, although it may seem personal to myself to mention it, that once on the Merrimac we were swimming from a point of rocks, at the upper edge of the Laurels, and the conversation turned upon the subject of diving and bringing weights from the bottom.

Picking up an ordinary-sized rock, he said, "Ned, I wager you a dollar you cannot bring that from the bottom 50 yards out."

With a spirit half of bravado, I said: "I would not fool with that pebble. Here is something like," taking a rock from the stone fence close at hand.

He thought I could never do it; but putting a white towel on the under side, that I might distinguish it under water, he took it out in the boat, and estimating the distance, dropped it overboard some fifty yards from the shore in twelve feet of water.

I swam out, and after some effort secured it and managed to bring it ashore. He was so pleased, he took it to the nearest scale and found it weighed 34 pounds. He seemed to feel as proud of what he thought was quite an achievement as if he had done it himself, or as if it had been something equal to the composition or delivery of his St. Patrick's Day poem. He related the incident in the *Pilot*, challenging any one to surpass it. I was constantly having men tell me of something which O'Reilly had laid at my door that pleased him.

When Mr. Moseley went to Washington, Mr. O'Reilly viewed his going as a calamity to their companionship. "The summer opens lonesome for me," he mournfully

wrote in June, 1887. "I can't bear to look at the canoe. . . . I shall never have the heart to paddle down to Governor's Island and swim."

Yet the climax of their journeyings was in store for them. This was a trip to the Dismal Swamp, for which they did much fond and excited planning. O'Reilly wrote of their venture into that strange region: "In the month of May, 1888, two sunburned white men, in cedar canoes, turned at right angles from the broad waters of the Dismal Swamp Canal, and entered the dark and narrow channel, called the Feeder, that pierces the very heart of the swamp."

Another canoe trip was soon among the plans, this time to the Eastern Shore of Maryland — "A tent on the beach," as O'Reilly outlined the project, "shooting and fishing, and lying in the sand all day, like savages." Again he wrote: "In May, please God, we will go down to that Eastern Shore and take a howl in the primeval. I am tired to death." He was, in truth, tired to death, and he and his comrade were to voyage together no more. After O'Reilly's untimely death in 1890, the sorrowing and loyal friend contributed some interesting and intimate recollections of their rare companionship to the biography of the poet which James Jeffrey Roche was preparing.

A graceful appreciation of Mr. Moseley's own memorial of his friend, "John Boyle O'Reilly, the Man," was written by another friend, Samuel Roads, Jr., of Marblehead, Massachusetts, author of "The History and Traditions" of that unique old town, in acknowledging the receipt of the brochure:—



MR. MOSELEY IN THE DISMAL SWAMP
From a photograph made by John Boyle O'Reilly in 1888.

TO MY FRIEND, EDWARD A. MOSELEY :

Whose charming description of "John Boyle O'Reilly the Man," is only an unconscious tribute to noble characteristics of mind and heart which are his own, as much as they were those of the patriot and poet of whom he writes; and whose article on "Arbitration," proves to all the world what his friends have always known, that his great heart always goes out in sympathy to the toiler and wage earner.

SAMUEL ROADS, JR.

September 15, 1893.

In loyalty to O'Reilly's memory, Mr. Moseley championed the retention of Captain Hathaway, as the United States Shipping Commissioner of New Bedford, Massachusetts because of his gallant part in the rescue of O'Reilly from the penal colony of western Australia. He was happy to serve the memory of his friend again, by securing the presence of Vice-President Stevenson at the dedication of the O'Reilly monument in the Fenway at Boston.

When Moseley, too, had completed the voyage of life, a friend of the two friends, Joseph Smith of Lowell, Massachusetts, at a meeting of the John Boyle O'Reilly Club of Boston, held at Loblolly Cove on Cape Ann amid scenes associated with their memory, read this tribute : —

A MEMORY

Here by the waters of Loblolly Cove
We greet the spirits of the dead we love.
Here by the restless, ever-sounding sea,
Comes back the dear, the undying mem'ry
Of older days, of braver, sweeter days,
When faith and friendship marked our lives and ways;
When life was sweet and all the world was young,
When Moseley wrought and Boyle O'Reilly sung.

In the firm valor of their faith and youth
They faced the world and fought for right and truth ;
And here they heard the sea's deep-throated call,
Free for the nonce, from dull convention's thrall.
To them that voice told many a wondrous tale
That sent their souls to sea with ev'ry sail,
Adventuring back where ev'ry spicy breeze
Kissed the green Edens of Polynesian seas.
Their work is done ; their souls from earth are free ;
Their ships now anchor in the tideless sea ;
Each nobly wrought, each left an honored name,
And each inspired a love more sweet than fame.
Now watch and ward a gentle spirit keeps
On that green hill where Boyle O'Reilly sleeps,
And Moseley rests where sweet sea breezes bring,
The music which the tides eternal sing.
Here by the waters of Loblolly Cove
We hail the spirits of the dead we love.

A woman of distinction and discrimination pronounced Mr. Moseley "the most accomplished man" she ever knew. It would not be easy to measure the range of his accomplishments, for he was not in the habit of making them a merit. For instance, how many who knew him had any idea that he could paint? Yet he had a strong love for the fine arts, and in his early days he both drew and painted well.

The deep-sea chanteys were dear to him ; and he possessed a rich and strong baritone voice with which, when he sang such a song as "Toll not the Village Bell for Me," he moved his hearers to tears. He was greatly interested in the musical work of his daughter, providing her every facility and constantly bringing her new music.

He never dabbled in anything, but, whether at work

or play, he strove with all his might to master whatever he undertook. He knew the trees, the flowers and the things that grow in field and garden. He had a practical and scientific knowledge of them. When he built his Washington house in Sixteenth Street, he had only a little grass plot, hardly as large as a billiard table, but he experimented with various grass seed until he had a sward like velvet, which was literally hand raised. He would hardly have survived his cares and anxieties but for the pleasure he had in his various gardens. When it was not his legal books among which he fell asleep, it was among all the flower catalogues published in this country and many from abroad; he had an inherited and passionate love of flowers. Even when his health began to fail, the medical books he studied and which made him almost as good a physician as can be made by books alone, did not supplant the gardening books.

In his enthusiasm for working in the soil, he bought a small farm at Kenilworth, Maryland, in 1903, and undertook to raise flowers and vegetables for the Washington market. Busy as his days were, he was obliged to leave the management of the place to others, himself able only to go out at night and do what he could while the light lasted. His correspondence with his head farmer makes a surprising disclosure of his close knowledge of both gardening and marketing, and at the same time gives some amusing glimpses of his ups and downs in agriculture. A few extracts from a large packet of his letters, written to the farmer on days when he could not go out to the farm, must suffice:—

Professor Wood said that he did not believe that any violets could be grown that were better than those violets which you grew in the house. They are so strong and vigorous. . . .

Now don't fail to see that the ice is kept on the violets. . . .

If you would do as well by me as I by you, I think you would buy some corn and cut me some wood. I was sure this morning when I looked at your letter that you would say, "I am going to get some corn and fatten the pigs." . . .

I am very glad that you are improving the quality of the violets you send —. It won't pay to monkey with him. There are plenty of violets from Virginia, and if you don't have violets sent him better bunched, larger bunches, etc., than he gets down there, you will have to take the price which he pays the Virginia people. Our violets, with your skill in growing them and bunching them, ought to be the best that come into the market and bring the highest prices, and undoubtedly they will be if you will follow it up. . . .

Do not plant any more onions, please, but clean those that you have, where they need it — the little ones. I do not think I will be out to-day, but will see you to-morrow. Be sure to sterilize that stuff, and do it well. . . . Give it a good cooking, and then put it where nothing can get at it — on boards or something. Lay it out thin and dry it out so as to make it light and feathery. Do not fail to do this, please. Go to work at it at once, if you will, and cook the devil out of it. . . .

I would not sell a violet to anybody, if they gave ten dollars apiece for them, except the people you are supplying. If — wants to buy our violets, why let him do it regularly, but as a matter of accommodation simply, we have not got them to sell. If violets continue to grow as I think they are going to do, you will be picking ten thousand a day before long, and you had better keep your customers supplied. . . .

I trust you won't bother me any more than you can help for the present. I have got all I can do here in the office, and I can't give any more thought to the farm. If

you are having both tanks filled, you will have them both clouded and will have them so for the winter probably. You ought to put clear water in one and then fill up the other from it. I can't tell you anything about going away just now as I have got more than I can do. Now please don't bother me any more. . . . If you want anything, you will have to attend to it yourself. . . .

I gave one bunch of those onions to —. He thought they looked beautiful and is going to try them, and I am going to have some other people try the other bunch. I am having — figure out about the violets. You will find that they have done just as well as ever. They are not blooming now, but in former years they did not bloom later. Just about this time they were blooming, and along about the last of November or first of December you hardly had any. . . .

It is no use for you to be bellowing. You ought to thank God that things are as good as they are. There is only one thing more, and that is that you want to get plenty of straw and litter to put on those onions or you will lose them. . . .

I could not reach you by telephone this morning, but hardly supposed that such a catastrophe had taken place. Of course, I am sorry enough about it, but the only thing to do is not to get discouraged. I had \$900 insurance on the thing, but it was cancelled about a fortnight ago and therefore it is a total loss. I know of nothing else to do but to go ahead and build another house. There is no use to throw up the sponge or get discouraged. Save everything you possibly can. Get the water out of your boilers so they won't crack, and empty your water pipes. The first thing you want to do is to make some sort of arrangement so you can get water. See what can be done about getting a new tank or getting the old tank in condition so that it will hold water. Perhaps you will have the steam engine to do your pumping.

Anyway, go ahead and do the best you can; don't get discouraged, I am back of you. A little fire is not going to drive us to the wall. I am sorry enough the house and the rest of the stuff are gone, but we will have

to make the most of it. You might as well start to clean up, and we will get ready to go to work to build.

Surely there was no lack of the true sporting spirit under that blow, nor was there when, on casting up accounts, he found that he had paid out nearly a thousand dollars in one year for horse feed. The end of this story of long-distance farming does not appear among Mr. Moseley's papers.

But nothing ever dampened his ardor on the general subject. Early every morning before he went to his office, Nelson, his faithful servant of more than twenty years, drove him to the Agricultural Department, and every spring evening he came home with his arms full of the first flowers. This letter from the White House recalls a little incident that may be worth noting here:—

The White House, Washington.

March 16, 1907.

MY DEAR MR. MOSELEY:

I handed the pot of shamrock, which you were so kind as to send to the President, to him just as he was leaving the office, and he asked me to thank you most cordially for your courtesy and to say that he would place it at once in Archie's room.

With regard, believe me,

Sincerely yours,

WM. LOEB, JR.,

Secretary to the President.

Mr. Moseley was always an earnest student of plants and made himself in his later years an expert in Chinese plants and vegetables. He imported seeds and flowers from distant lands. No man could have more beautiful

monuments than the beds of flowers still blooming in the parks of Washington, which have been developed from seed imported by him and given to the Department of Agriculture. A lawyer friend, wondering at the grasp of the fundamental principles of the law which he displayed while walking with him in a Government garden one day, was even more astonished on meeting the chief specialist of the government in the matter of foreign plants to hear Mr. Moseley discuss that subject on fairly equal terms with the scientist.

Mr. Moseley is spoken of by one who was much under his roof as being exceedingly agreeable to live with, by reason of his good-humor, his geniality, his cheerful pleasantry, his consideration. His hospitality was unbounded. Often when a stranger came to Washington, homeless, homesick and alone, with no claim other than that of acquaintance, he was made a daily guest at the generous table until after weeks or months he had become familiar with the life and people of the place. It was a pleasant lodge in the wilderness, the charming interior by night overflowed with light, and the house was always full of flowers.

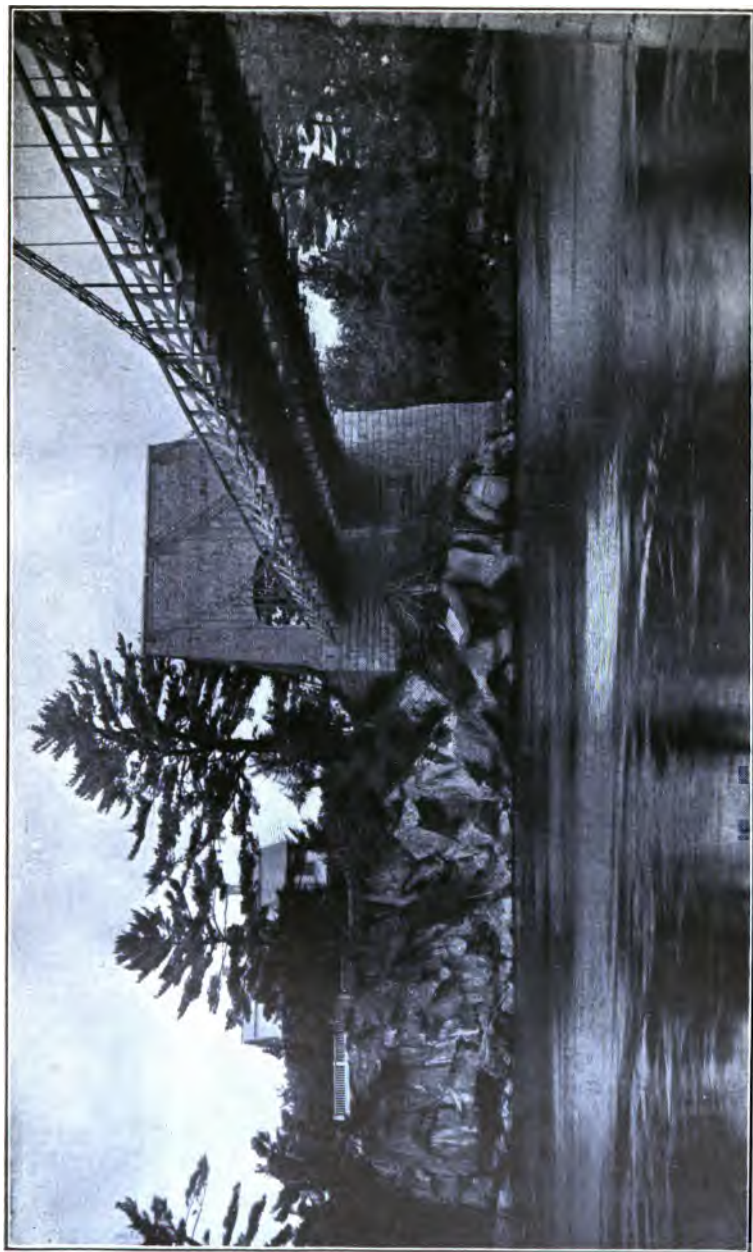
To one of his worlds, at least, Mr. Moseley ever remained unchangingly loyal, and that was the little world of Newburyport, into which he was born. Although the years of his manhood were passed elsewhere, Boston and Washington were to him hardly more than the places of his exile. He held himself always a citizen and lover of the old town where the Merrimac flows into the sea. There his two brothers and a sister have their homes,

and at the last, as at the first, it was his favorite playground. He never lost his youthful delight in its beautiful river and the charming country in which the town is set.

Up the river and just beyond the edge of the town, the waters are parted by Deer Island, a lovely tree-grown cliff of some seven acres, the home chosen by the late Richard S. Spofford and cherished by his widow, the poet and novelist, Mrs. Harriet Prescott Spofford, sister of Mrs. Moseley. This was the summer home of Mr. and Mrs. Moseley and their daughter, as their Washington house became the winter home of Mrs. Spofford.

Mr. Moseley's last pastime was motor boating on the Merrimac and on Ipswich Bay and sometimes around Cape Ann. He was contented with the little old engine with which he started, until one day his brother Fred passed him on the river. After that, he did not rest until he had an engine capable of evening up the score. He studied the subject as if he were intending to make a business of constructing motor boats. He went to Rochester for the purpose of personally inspecting some engines. With no little difficulty, he imported from Austria a rare trumpet, on which he could wake the echoes of the forest-bordered river with a fanfare worthy of a royal progress.

When on his vacations he arrived at the Island, it seemed to all that summer had begun, his friends welcomed him, the family delighted in him, the servants adored him. He visited his old haunts, found his old wild flowers, interviewed the old fishermen, spent hours



DEER ISLAND IN THE MERRIMAC, NEWBURYPORT, MASSACHUSETTS, WITH CHAIN BRIDGE IN THE FOREGROUND AND
A GLIMPSE OF THE HOME OF MRS. HARRIET PRESCOTT SPOFFORD, WHERE MR. MOSELEY PASSED HIS VACATIONS

in his brothers' gardens at Indian Hill and Maudesleigh and Chailey, and rowed with his brother-in-law. One of his last pleasures was when he tapped at the door of his sister-in-law, Mrs. Spofford, at half-past four in the morning, and together they took the swift *Fawn* under Captain Charlie Lundborg, and fled down the Merrimac in the sunrise, and through the silver windings of Plum Island River, rushing back through water where the changing wind met the tide, drenched and glad of breakfast.

In his desire for a boat entirely to his liking, he set up a shop on the river bank, and employed a skillful carpenter. In his last days at Deer Island, when he no longer dared race up to Haverhill or out past Plum Island, he could still go to the little shop and, as he sat hour after hour beside the carpenter's bench, discuss and direct the building of the boat. Alas, he was to sail the Merrimac no more !

APPRECIATIONS

THE OUTLOOK, 287 FOURTH AVE., NEW YORK,
February 15, 1912.

MY DEAR MR. MORGAN:

I most gladly write to say how I appreciated Mr. Moseley's services during the many years he was under me.

He was one of the men who did really substantial service for the cause of industrial betterment of our people. He fought on every occasion for better conditions of labor for the great army of railway employees, and on behalf of all laws for appliances that would make the cars safer; and he took a leading part in the effort that resulted in putting upon the Federal statute books the many laws that now look to the safety and welfare of railway employees.

I took a real pride in his association with me, and valued him, and lamented his death.

Faithfully yours,

THEODORE ROOSEVELT.

THE WHITE HOUSE, WASHINGTON,
December 7, 1911.

MY DEAR MR. MORGAN :

I am in receipt of your request for a contribution to the memorial for Mr. Moseley, and am glad to send you the following : —

The late Edward A. Moseley did much to further the introduction of safety appliances upon the railroads, the objects of which were to preserve human life. He worked especially for the safety of railroad employees. This alone would have brought him honor and respect, but he found time also to give attention to other public matters of importance.

His work as Secretary of the Interstate Commerce Commission was worthy of high commendation.

Sincerely yours,

WM. H. TAFT.

HONORABLE MARTIN A. KNAPP

PRESIDING JUDGE OF THE COURT OF COMMERCE, FORMERLY CHAIRMAN OF THE INTERSTATE COMMERCE COMMISSION

To be actuated by an ardent and unselfish purpose, which discouragement never weakens and difficulty cannot defeat, and to accomplish that purpose in large measure with the results of great and lasting benefit to humanity, is a record of usefulness which only a few men leave behind them. One of these was Edward A. Moseley.

Born under conditions of family station which pointed to the typical career of the well-bred New Englander, he turned aside from the allurements of wealth, the pleasures of social prestige, and the honors of political distinction, to devote the energies of a lifetime to the cause of the overworked and unprotected. Especially was he moved with sympathy for those engaged in hazardous callings, and for the betterment of their lot he labored in season and out of season. This was the keynote of his character and the ruling spirit of his activities.

The pursuits of early manhood gave him a wide knowledge of men and affairs, and this informing experience, added to abilities of a high order, qualified him for the place in which his life work was mainly performed and with which his name will always be associated.

When the Interstate Commerce Commission was created in 1887, he was made its Secretary and served continuously in that capacity until his lamented death terminated the relation. To the varied and exacting duties of this office he brought an eager and resolute mind,

unbounded energy and an industry that never wearied. From first to last his heart was in the work of the Commission, his one ambition to have that work succeed. For nearly a quarter of a century he gave the best that was in him to aid the development of an adequate and efficient scheme of railway regulation, and his zealous labors contributed in no small degree to the notable results that have been attained. His loyalty was beyond all question, and every Commissioner under whom he served regarded him as a personal friend.

Whilst he participated at all times and most helpfully in the general work of the Commission, he was conspicuously active in promoting measures for the protection of railway employees and the traveling public. To his persistent and determined efforts was largely due the enactment of the various safety appliance laws, and he exerted himself unceasingly for their efficient administration. His vigorous personality pervaded this field of regulation, and the beneficial results accomplished, now everywhere recognized, will be his enduring monument.

A remarkable man he was, of versatile powers and marked individuality, enthusiastic, resourceful, uncommonly likable, a man whose habitual and practical interest in those less fortunate than himself was constantly manifested, and above all a man who performed a work of unusual and permanent value, for which he will be long and gratefully remembered.

MARTIN A. KNAPP.

HONORABLE FRANKLIN K. LANE

SECRETARY OF THE INTERIOR, FORMERLY A MEMBER OF THE INTER-
STATE COMMERCE COMMISSION

The distinctive characteristic of Mr. Moseley, which drew men toward him, was the breadth of his sympathies. He thought in human terms. The mere matter of dollars involved in a controversy before us did not appeal to him, but once a question was raised involving injustice he was keenly alive. The man of small affairs appealed to him as of quite as much importance in the general scheme as the man with the largest interests; and where he found those who were without adequate representation he made himself their representative, if their cause was just.

He left our hearing room on the day of the final submission of the proposed rules governing the application of safety appliances. At that time he had been sick already for months, but had fought off his illness to give consideration to these matters which were the fruit of twenty years of persistent struggle on his part. As he left the room, I turned to one of my colleagues and said, "This is the last time we will see Mr. Moseley in this room, and the aim of his life has been achieved." I believe he felt that way himself.

The city of Washington is at all times filled with men who jealously guard the rights of property. It has contained few comparatively whose first thought is the welfare of their kind. In this class Edward A. Moseley was preëminent.

FRANKLIN K. LANE.

HONORABLE JUDSON C. CLEMENTS

MEMBER OF THE INTERSTATE COMMERCE COMMISSION

The long service of Mr. Moseley as Secretary of the Interstate Commerce Commission, from the time of its organization until his death, was characterized by intense zeal, prompted by a loyal pride in the work and standing of the Commission and a sense of personal duty and responsibility.

At an early period during his term of office he became deeply interested in the subject of greater safety of railway employees and their just treatment in the matter of compensation for injuries sustained in the service. Naturally, from long consideration of these matters and an earnest effort to promote legislation for better conditions, he became interested in the amicable adjustment of disputes between carriers and their employees.

In addition to his energy and zeal for the cause which he espoused, he was gifted with a discriminating knowledge of human nature, and was wonderfully resourceful both in wisely planning and wisely executing his plans to meet and deal with practical conditions and difficulties in the best manner to promote the ultimate success of his cherished projects. He was always persistent, of a cheerful spirit, courteous and generous without ostentation. He was naturally sympathetic and ready with a helping hand to those in trouble or need.

The greatest monument to his memory as a public servant is the record of the conspicuous and effective part taken by him in the promotion of legislation for the

protection of life and limb and the amelioration of the condition of those engaged in arduous and hazardous labor, and for the better protection of their rights in the adjustment of liabilities for injuries. His thought and untiring labor devoted to these beneficent and just purposes have erected a more cherished and enduring monument to his unselfish devotion to human right than could any shaft of stone.

JUDSON C. CLEMENTS.

HONORABLE CHARLES A. PROUTY

MEMBER OF THE INTERSTATE COMMERCE COMMISSION

Mr. Moseley, to an even greater degree than most men who accomplish things, devoted his entire energy to the one matter then in hand, and to this concentration of forces he added a persistency seldom equaled. Not discouraged by defeat or rebuff, he returned repeatedly to the attack, always from a different point of onslaught and by some new and unexpected means. Few men in Washington, not in positions of great authority, could bring to bear upon the accomplishment of their purpose the varied forces that he could.

I first knew him when I became a member of the Commission, in December, 1896. For some years following he gave much attention to the amendment of the Act to regulate commerce, which had been emasculated of its supposed virility by the decisions of the Supreme Court. It was largely due to him that the trains of thought and courses of action were put in operation which finally

resulted in the Hepburn amendment of 1906; but before that time came he had transferred his activities to the enforcement of the Safety Appliance Act and the procuring of additional legislation looking to the protection of railway employees, to which the last years of his life were entirely devoted. Others will tell of the results of those labors; I only wish to bear witness to the disinterested character of his motives.

While Mr. Moseley came from characteristic stock of Puritanic New England, he had little taste for the cultured pursuits which might naturally have appealed to him. His thought was with the lower stratum of society. The under dog appealed to him. It was not to win out against the railroad, not to see his name in the newspaper, not to gain a following with which to demand recognition, but because he honestly felt for the hardship and suffering of the brakeman, that he gave his time and his substance.

Largely by reason of this very disinterestedness he won the affectionate regard of the men in whose service he wrought and whose appreciation he prized, and, incidentally, fame and power to an unusual degree.

C. A. PROUTY.

HONORABLE EDWARD E. CLARK

MEMBER OF THE INTERSTATE COMMERCE COMMISSION

I had the privilege and the pleasure of a close and intimate acquaintance and business association with the late Honorable Edward A. Moseley, extending over a number of years, and I am glad to express my esteem for the man and my appreciation of his work.

employees, and prevention of accidents on railroads, has not yet been completed, but he had the satisfaction before he was called away of seeing the foundation well laid and the major portion of the superstructure reared, and of knowing that he had been closely identified in helpful and useful ways in building both.

The esteem and affection for him that are entertained by the thousands whom he has helped, constitute a memorial which I know would be wished for and prized by him more than any or many other monuments.

The world is better for his having lived.

E. E. CLARK.

HON. JAMES S. HARLAN

MEMBER OF THE INTERSTATE COMMERCE COMMISSION

The late Edward A. Moseley took a broad view of his duties as Secretary of the Interstate Commerce Commission. Not content with being merely its executive officer, he made a close study of the law with a view to ascertaining its defects and omissions, and had much to do with the amendatory legislation by which the act was brought to its present state of effectiveness.

But his best work in the public interest was a by-product, if I may use such a phrase in this connection, of his official relation with the Commission. In that capacity he came into frequent and close contact with railroad men, and there was thus early brought to his attention the need of legislation for the protection of railway passengers and employees.

The Safety Appliance Acts, the Hours of Service Law, the Employers' Liability Act, and other similar statutes were to some extent the result of his long-continued efforts to secure the enactment of such legislation. He had much to do with the enforcement of these laws, and upheld with vigor the principles which they establish. The duties cast upon him by this legislation were at times onerous, but he undertook them cheerfully and performed the work with marked efficiency. It was with him a labor of love; his friends, in fact, well know how large a part of the remaining years of his life was devoted to the service of others.

His high sense of duty and the strict performance of his official work won for him the confidence of the Commission and of those with whom he came into official contact. His kindly nature and personal qualities were such as to endear him to all.

JAMES S. HARLAN.

HONORABLE JAMES R. MANN

MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES, FORMERLY
CHAIRMAN OF THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN
COMMERCE

I knew Edward A. Moseley very intimately in a legislative way. For years I was one of the active members on the committee of the House of Representatives which deals with railway legislation and during a part of the time was chairman of the committee. All proposed legislation relating to the Interstate Commerce Commission came before our committee, as well as all proposed

legislation concerning rules or appliances to prevent railway accidents, or providing for their investigation.

I think Mr. Moseley came to have a peculiarly favorable regard for me, and he used to come to me almost constantly concerning the legislative propositions before the committee in which he was interested. I found that he took a special interest in everything relating to the safety of railway employees and the traveling public. On every proposition of the sort which came up, he thoroughly informed himself, and I think I never took action upon any such proposition without having a personal consultation with Mr. Moseley.

A part of the time the legislative agent of the railway employees in Washington was very autocratic in his demands and difficult to get along with, but I never knew Mr. Moseley to lose his temper, though sometimes unjustly accused.

He tried to get legislation which would be protective to the vast army of railway employees and tend to prevent injury and accident by railway operation. We believed him to be sincere in his efforts and to be well informed as to details, and hence he had great influence. Much of the railway safety appliance legislation was largely molded by him, and the railroad employees lost an able friend when his life passed away.

JAMES R. MANN.

HONORABLE CHAMP CLARK

SPEAKER OF THE HOUSE OF REPRESENTATIVES

I knew the Honorable Edward A. Moseley very well during his service with the Interstate Commerce Commission. He did a vast amount of work and he did it well. He was a very valuable public official.

He was a good American citizen and a very companionable and interesting gentleman. I regard his death, not only as a public loss, but as a personal bereavement.

CHAMP CLARK.

HONORABLE JOSEPH G. CANNON

FORMERLY SPEAKER OF THE HOUSE OF REPRESENTATIVES

For many years Edward A. Moseley was the efficient Secretary of the Interstate Commerce Commission. I knew him during practically the whole period of his incumbency of that office, and, in common with all who had knowledge of his work, I regarded him as an important factor in the development and usefulness of the Interstate Commerce Commission.

Able, conscientious, and industrious, the labors he performed were not only of great value to the Commission, but of equal value to all the people of the United States.

J. G. CANNON.

HONORABLE RICHARD OLNEY

FORMERLY ATTORNEY-GENERAL AND SECRETARY OF STATE

The late Secretary of the Interstate Commerce Commission, Mr. E. A. Moseley, I knew and highly respected. At the same time our personal intercourse was comparatively slight, occurring principally in the years between 1895 and 1898 and relating to the suit between the receivers of the Philadelphia and Reading Railroad and certain employees who had been discharged because they belonged to a labor union, and to a proposed bill for the arbitration of disputes between railroad corporations and their employees.

In the administration of his office his diligence was untiring, and the efficiency of the Commission was largely due to his personal efforts. He was specially interested in all measures looking to the welfare of railroad employees, himself initiated many of them, and if their employment is to-day better paid, less dangerous and attended with less hardship than it was twenty years ago, the result is to be largely ascribed to his zeal and his labors.

RICHARD OLNEY.

HONORABLE CHARLES J. BONAPARTE

FORMERLY ATTORNEY-GENERAL

Mr. Moseley was a zealous, indefatigable, and praiseworthy public servant, who devoted unreservedly his time, strength and talents to the discharge of his duties, and was a prominent factor in the highly salutary work of the important branch of the Government in which he served, contributing largely to its efficiency and success.

CHARLES J. BONAPARTE.

HONORABLE GEORGE VON L. MEYER

FORMERLY SECRETARY OF THE NAVY

In my estimation the services to this country of Edward A. Moseley as a specialist in the broader railway problems have been of the greatest value. A subject so vast and complex required specially adapted mental qualities, and to this question Mr. Moseley bent the powers of a mind well qualified to cope with it.

The recognition of his work was wide, and the effect of it by no means ceased with his death.

GEORGE VON L. MEYER.

HONORABLE GEORGE GRAY

JUDGE OF THE UNITED STATES COURT OF APPEALS

My friendship for Mr. Moseley was of long standing, and I felt deeply the sudden termination of his useful life.

I became acquainted with him when he went to Washington at the beginning of Mr. Cleveland's first administration as Secretary of the newly constituted Interstate Commerce Commission, and I grew somewhat familiar with what he undertook and so successfully accomplished in relation to the important work of that Commission. Sympathizing with the purposes Congress had in view by the creation of the Commission, he strove with whole-souled devotion to promote its usefulness and to inspire confidence in its work.

During the long months of the Anthracite Coal Strike Arbitration, I was closely associated with him as Secretary of our Commission, and I shall always hold in grateful remembrance the absolute fidelity and untiring zeal that characterized his efforts to make successful that greatest of industrial arbitrations.

He did his work with so little of self-exploitation, that he did not always receive the credit due for the important results achieved by him.

GEORGE GRAY.

MAJOR-GENERAL LEONARD WOOD

CHIEF OF STAFF OF THE UNITED STATES ARMY

Mr. Moseley was of the greatest assistance to me as Military Governor of Cuba in the preparation of the present railroad law. When the framework of the law had been drawn up, the matter was turned over to Mr. Moseley for a most careful study. The results of his work were embodied in many important changes, all looking to the improvement of the law. He brought to Havana a very large fund of experience and information gained on the Interstate Commerce Commission. All who came in contact with Mr. Moseley during his Cuban work recognized him as an authority, and I think Sir William Van Horne and all others who were thrown in contact with him during this period formed a very high opinion of his abilities and a warm feeling of attachment and friendship for him.

As for myself, I can never forget the immense value of his services.

Mr. Moseley was a man of singularly attractive character, frank, cordial, always responding cheerfully to demands for assistance. His information concerning railway legislation was profound, and the controlling motive in all his work was the betterment of conditions, not only for the traveling public, but for the vast number of people employed by the railroads. This feature of his work in the Cuban railroad law was very highly appreciated by railroad men in this country.

LEONARD WOOD.

HONORABLE CHARLES P. NEILL

UNITED STATES COMMISSIONER OF LABOR

During the last ten years of his life it was my privilege to know Edward A. Moseley intimately. Our common interest in the improvement of labor conditions drew us together, and we were frequently closely associated on the same work. This was notably true during the existence of the Anthracite Coal Strike Commission in 1902-1903, when for six months we practically lived together. Each succeeding year of my association with Moseley begot an increasing respect and admiration for the unselfish devotion and splendid earnestness with which he gave himself to every movement that looked to the betterment of the condition of those of his fellow men who bear the brunt of the heavy manual toil which society requires for its necessities and its comforts. Each of those succeeding years brought with it also an increased personal affection for the kindly, generous and lovable personality which was united in him with a vigorous and virile character.

I have known few men who had the genuine interest of their fellow men at heart to the same degree that Moseley had. He had nothing to gain, and if anything had something to lose because of his open and persistent struggle in the cause of industrial betterment for the wage earners; but he made their fight his fight, fought it unceasingly and nobly, and left a record of achievement behind him which is at once a monument and an inspiration.

CHARLES P. NEILL.

HONORABLE GEORGE G. CROCKER

FORMERLY CHAIRMAN OF THE MASSACHUSETTS RAILROAD COMMISSION AND CHAIRMAN OF THE COMMITTEE ON SAFETY APPLIANCES OF THE NATIONAL ASSOCIATION OF STATE RAILROAD COMMISSIONERS

A little more than twenty years ago, the Massachusetts Board of Railroad Commissioners organized a movement to secure legislation by Congress requiring the use of automatic couplers and train brakes on freight cars. The legislatures of the various States were roused to memorialize Congress, and the matter was taken up at the conventions of the Railroad Commissioners of the several States, which at that time were held annually in the offices of the Interstate Commerce Commission in Washington. Pursuant to a vote passed at one of these conventions in 1891, Judge Cooley, Chairman of the Interstate Commerce Commission, appointed me as chairman of a committee to hear the parties interested, and draft and secure the passage by Congress of appropriate legislation.

Edward A. Moseley was intensely interested in the movement. He gladly consented to serve as secretary of the committee, a position to which he devoted a large amount of time and thought. He persisted in the work, and the passage of the beneficent Safety Appliance Law less than a year later was undoubtedly due more to his influence, enthusiasm and disinterested hard work than to those of any other man.

The expenditure involved in equipping freight cars with the train brakes and automatic couplers was, before

the passage of the law, estimated by the railroad representatives at \$75,000,000. They claimed that any compulsory law would be ruinous, even if ten years were allowed for the work. The Switchmen's Union, whose members were the greatest sufferers in the operation of handling the old link-and-pin coupler, also opposed the passage of the law on the ground that it would throw many men out of a job.

Mr. Moseley, however, had clearly before him the dreadful picture of the annual slaughter, and he knew that it ought to be stopped. He knew, too, that by advocating the passage of the law he risked his position. Unflinchingly he devoted his time and strength to the cause, and that he was able in his lifetime to see the successful results of his work was to him a source of great satisfaction. There can be no doubt that the trainmen on our railroads are chiefly indebted to Edward A. Moseley for hastening the general adoption of the life-saving appliances covered by what is known as the Safety Appliance Law.

GEORGE G. CROCKER.

MR. B. B. ADAMS

OF THE RAILWAY AGE

Mr. Moseley's most admirable trait was his courageous independence. He was a strong partisan, and those who opposed him, either in the courts or in less formal affairs, encountered a persistence which knew no limit; but he always meant to fight only for the right. He "gloried

in a fight," but his energies were put forth in causes which not only appealed to him as just, but which appealed to humanitarian motives and which were causes needing a strong friend.

The brotherhoods of railroad employees had reason for gratitude, not only for his friendship and influence, but also for his diplomacy and discretion. If the brotherhood leaders had to secure their beneficial laws solely through negotiation with Congressmen, engrossed with other important affairs as Congressmen must be, they would, no doubt, have suffered many delays and losses which they avoided by Mr. Moseley's knowledge of the field, his correct estimate of the hindrances, and his unintermittent devotion to the railroad men's welfare.

The railroad companies opposed many of the laws proposed for the benefit of the train men (largely because they desired simply to interpose delay), and thus it came about that Mr. Moseley was often in the thick of what seemed to be a conflict between labor and capital; but he was always able to declare his friendship for capital as well as for labor; and he strove to do justice to both. His generosity was constantly in evidence, and his services for the brotherhoods were given without compensation.

To those who knew him it is superfluous to say that his aggressiveness was coupled with a geniality, genuine and unflinching. He could denounce an oppressor in the most vigorous style, and on occasion an erring or shortsighted friend — say a labor leader — could be rebuked with invective equally sharp; but he had unbounded con-

sideration and tenderness not only for his intimate friends, but as well for the humbler ones with whom he came in contact. A poor negro woman, appealing to the Commission for relief from the "Jim Crow car" laws, never experienced more kindly and gracious treatment than she received at the hands of Secretary Moseley.

B. B. ADAMS.

MR. JOHN MITCHELL

FORMERLY PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

It was my good fortune to have enjoyed for a considerable number of years the acquaintance and, I believe, the confidence of the late Edward A. Moseley. I was familiar with the splendid and unselfish service he rendered the wage earners of our country, especially those employed in the transportation industries.

He was a potent and indispensable factor in securing the enactment of Federal legislation for the protection of railway employees; his service in this respect alone, to say nothing of his great and sympathetic interest in the uplift of common humanity, entitled him to the respectful and loving expressions which came from every source at the time of his death. His name deserves a place among the names of men who made the world better because they lived in it.

JOHN MITCHELL.

MR. T. V. POWDERLY

THE VETERAN LABOR LEADER

A friend is one who understands you without explanation. Edward A. Moseley was my friend.

We met for the first time, over a quarter of a century ago in Boston, in the sanctum of John Boyle O'Reilly. James Jeffrey Roche dropped in while we were there, and before separating, we had lunch in a queer little old-fashioned restaurant which they called Bohemia. While there O'Reilly, at Moseley's request, read to us his lines, "In Bohemia" from, as I understood him to say, the original manuscript.

Mr. Moseley was at that time a member of the Knights of Labor and Master Workman of his local assembly.

The acquaintance with Ned Moseley, as O'Reilly and Roche called him, begun that day, grew to a friendship which has continued ever since. I learned to know him intimately and to love him for his faults as well as his virtues. He had both. His faults were few but lovable; his virtues many and worthy of emulation.

I shall not speak of his official life; others will do that much better than I can.

Fearless and outspoken in advocacy of what he deemed right, he had but scant patience with those who took the side of what he believed wrong.

Animated by the largest sympathy for the man who worked with his hands, he listened with attentive ear to the toiler's plea for justice and did what he could to smooth the path of the laboring man to better things.

Hypocrisy was alien to his nature; he despised sham, deceit and cant. He was a man of earnest deeds. He so valued his word as not to pass it lightly, but once he gave assurance of performance, he faithfully fulfilled his promise.

It was a delight to call on Moseley, as I often did, and find him angry at some thing or some one. If the object of his wrath were present, so much the better, for then he spoke so plainly and forcibly as to render misinterpretation impossible.

Clouds would come occasionally, but they quickly dissolved in the warmth of his sunny nature. He envied no man, and in word and deed was charitable to all. He bore no resentment beyond the hour of its birth, and the word "revenge" found no abiding place in his vocabulary.

Day does not end with the darkness that comes at eventide, it goes on forever, for night is but the cloud passing between us and the light. We know the day lives on and that we shall see it again. Moseley's life has not ended, for what we call death is but the veil that human vision cannot penetrate. The splendid work begun by him goes on, and others will be better equipped to continue it, because the Master Workman's hand gave initial impetus to its forward movement.

They say Ned Moseley's dead — not so,
He lives, he's ever near.
We cannot see his face, 'tis true,
Or touch his hand so dear;

We know the earnest work he did,
Through all his life, for men ;
We know his loving deeds live on,
And in them he lives again.

T. V. POWDERLY.

MR. W. S. CARTER

PRESIDENT BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

My personal acquaintance with Mr. Moseley extended over a period of more than fifteen years, and during all that time I not only valued his friendship personally, but greatly appreciated his friendship so effectively expressed for all railroad employees. . . .

It appears to me at this time that the most efficient and effective work performed by our late friend, Mr. Moseley, was in the early days, long before members and officers of these railway labor organizations understood the importance of railway safety appliance legislation. In the latter days, when it was popular for everybody to support such legislation, it might be accepted as a matter of course that Mr. Moseley, as Secretary of the Interstate Commerce Commission, would be greatly interested therein.

But this was not the condition of affairs in the beginning, for at that time Mr. Moseley not only had to convince government officials and members of Congress of the necessity of enforcing the adoption of railway safety appliances, but had actually to convince the members and officers of the railway brotherhoods that such legislation was beneficial and desirable.

Unfortunately, there are comparatively few in railway service who have personal knowledge of the work that Mr. Moseley did at that time, and most of them judge him solely upon his work of a later day, when so many were interested in the same movement, and he appeared to be but one of a multitude advocating a great cause.

W. S. CARTER.

MR. H. B. PERHAM

PRESIDENT OF THE ORDER OF RAILROAD TELEGRAPHERS

This country has produced many strong characters, statesmen, politicians, diplomats, and men of big business, and the operations of the latter class are known and acknowledged to be superior by the leaders in other countries of the world. It has not produced many altruists, perhaps for the reason that there has been less cause for their existence here than elsewhere; but it did produce a notable one in the person of Edward A. Moseley.

He was a cosmopolitan. The world was his country, and mankind were his brothers. His sympathies were with the lowly, and his life was devoted to the amelioration of bad conditions. When he had accomplished something tangible in that direction, he experienced joys known only to the select few. When reverses came, as they did occasionally, he suffered physical collapse, but voiced no complaint.

In 1898, when the railroad men's Arbitration Law was being considered by Congress, it was largely due to his activities that harmful and damaging clauses were eliminated. When the Erdman Bill became a law, it was a

humane proposition, instead of an instrument of slavery as the record shows it to have been at one period of its existence. Another commendable feature of the law is that it recognizes labor organizations in no uncertain way, and it is not now left to the courts to ponder over the question as to whether or not a workmen's union or a labor organization is a legal entity, because they have been recognized by Congress.

In the conservation of human life, he found especial delight, and the Safety Appliance Laws in behalf of railroad employees is the concrete expression thereof. He worked indefatigably for the standard height bar and the automatic coupler law, and many a brakeman, conductor, and switchman owes his very life to our friend, without ever in the least being conscious of the fact.

And what would our railroads amount to now, without that beneficial enactment which they fought at that time every inch of the way? The prevention of death and injury to workmen is, or should be, a primary consideration, and just compensation for such matters secondary, but both are of prime importance, and Mr. Moseley was active in support of both propositions almost continually, and he left his mark upon them.

The Hours of Service Law might be mentioned as one of his most favored ideas, and he brought that to a successful issue. But his activities were so diversified and the length of his services to humanity covered such a period of years that I am liable to exceed my space limit if I attempt to do the subject justice.

H. B. PERHAM.

MR. S. E. HEBERLING

PRESIDENT OF THE SWITCHMEN'S UNION OF NORTH AMERICA

I first met Mr. Moseley over twenty-one years ago, and my impression of him has been that all who came in contact with him were bound to love and admire him for his honest and sincere purpose to benefit men who are engaged in hazardous occupations on railroads. I personally consider his death the greatest loss in my day and time, sustained by railroad men.

S. E. HEBERLING, President.

MR. F. T. HAWLEY

FORMERLY PRESIDENT OF THE SWITCHMEN'S UNION OF NORTH AMERICA

Edward A. Moseley was one of the most self-sacrificing men of modern times. Were it not for his activity, railway employees would now have but little protection in Federal statutes.

Having been closely associated with him in legislative matters, I can say he labored against the greatest difficulties in his efforts for the elimination, or, at least, the limiting of dangers to railroad employees, during which time the awful toll of death was exacted to such an alarming extent, that at last he aroused the public to a proper realization of the hazardous duties of the men he aimed to protect, and then the tide turned and he succeeded.

After the laws were passed, his greatest labors were in

enforcing them, for the violations were numerous, and the technicalities which were given as a cause for violating them were so many and so frequent, that the duty imposed was a severe mental strain, to which he eventually succumbed.

F. T. HAWLEY.

MR. W. F. HYNES

A PIONEER REPRESENTATIVE OF THE RAILROAD BROTHERHOODS IN
WASHINGTON

My first acquaintance with Mr. Moseley was in the winter of 1896, in the city of Washington, while representing the five great railroad brotherhoods, to wit: The Brotherhood of Locomotive Engineers, the Order of Railroad Conductors, the Brotherhood of Locomotive Firemen, the Brotherhood of Railroad Trainmen, and the Order of Railroad Telegraphers.

Before I went to Washington, Mr. Moseley had urged upon the organizations with such force the necessity of legislation that they finally took a determined position to secure protective laws, and, strangely enough, he was opposed in some instances by the very men whom he sought to relieve. His indomitable courage, and his unswerving loyalty to a cause that appealed to him with such peculiar force, bore down all opposition and swept it aside, even to the hurtful sneer that referred to "Moseley's fad," as some characterized it. Since that time the several railroad brotherhoods have maintained one or more representatives in Washington to assist in carrying forward this work.

In his fearless campaign, Mr. Moseley brought upon himself the enmity of the powerful corporations throughout the republic who were subjected to inspection and other requirements of the statutes. He did not abuse the duties of the responsible position which he held as Secretary of the Interstate Commerce Commission, but he frankly pointed out the unnecessary dangers, not only to the lives of the employees, but also to those of the traveling public, not to speak of the great property value which was annually sacrificed. Without doubt every railroad company in the country to-day would oppose any attempt to repeal those statutes, so beneficial have they proved to be for the employee, the public, and the employer.

The Erdman Arbitration Act, which became a law on June 1, 1898, was secured principally by the efforts of Mr. Moseley.

In looking over the records of railroad organizations, particularly in relation to strikes, he found, among other things, that they suffered in a cruel way from a peculiar operation of law, and that on more than one occasion men were found guilty of contempt of a court whose existence even had not entered their dreams. In 1896, a bill was introduced giving such a defendant the right to purge himself from contempt by a trial before a jury and by a judge, other than the one whose order was alleged to have been violated. "This," said Mr. Moseley, "is only what the veriest criminal demands and receives under the law, and surely you cannot deny that such consideration should be given to the honest working man."

His efforts in this direction were quiet and yet so insist-

ent and irresistible that that conservative body, the United States Senate, passed such a measure. But it was defeated or, rather, was buried in committee in the House. I might say in passing that this bill met its fate at a time when Mr. Moseley was sick and of necessity was absent from the city of Washington.

His incessant toil in behalf of the railroad workers, his anxiety to forward their interest and protect their lives by proper legislation, his correspondence, and the thousand things which he did for the benefit of this class, can never be fully known.

His heart and his pocketbook were ever open. I am inclined to believe that his monthly salary was a very insignificant amount after his gifts and charity were subtracted. There was absolutely no ostentation or display in anything he did. He was a foe to the boaster in any form, and the personification of modesty. He despised affectation and pretense, and had little patience with the hypocrite.

He was eminently fair and absolutely fearless. He was the poorest man I ever knew upon whom to run a bluff, and many found to their discomfort the folly of such an experiment. Yet it was hard, very hard, to quarrel with him. He was kind, forbearing, and exceedingly tolerant.

Massachusetts has given some great statesmen and citizens to the republic, and they have done much in its construction and in shaping its high and inspiring destiny. Mr. Moseley did all he could for his country and humanity. They did no more.

W. F. HYNES.

APPENDIX

WASHINGTON, December 6, 1898.

TESTIMONY OF MR. EDWARD A. MOSELEY, SECRETARY OF THE INTERSTATE COMMERCE COMMISSION

BEFORE THE INDUSTRIAL COMMISSION

THE commission met at 11 A.M., December 6, 1898, Vice-Chairman Phillips presiding. Mr. Edward A. Moseley, secretary of the Interstate Commerce Commission, testified. Mr. Phillips suggested that the witness be guided by the syllabus on transportation in giving his testimony.

MR. MOSELEY. I desire to say that I am here in the capacity of an American citizen, who for many years has paid a good deal of attention to the relations between employer and employee, particularly in connection with railroad labor. I was at one time an officer in one of the largest labor organizations in this country, and have always taken a great interest in this subject. Then, as the secretary of the Interstate Commerce Commission, I have been brought into more or less intimate connection with the railroads and the relations which they bear to the public and to their employees, as well as to each other. It must be understood, however, that I do not in any manner represent the Interstate Commerce Commission, but I am here solely as a citizen whose whole heart is wrapped up in the subject of the relations between capital and labor and the proper position which they should occupy to each other. I therefore gladly make such suggestions as appear to me and which I trust will prove of interest to this commission. In doing so I am happy to follow the suggestion of Mr. Phillips, your chairman, whom I have long known as the friend of those interests which I desire to conserve so far as I can.

The first part of your "topical plan of inquiry" relates to the "Character of duties and classification of employees of railroads and other carriers by land." First, regarding the wages of employees, I desire to pass that and come to the question of blacklisting discharged employees and compulsory performance of service under mandatory injunction.

Q. (by MR. FARQUHAR). Which section? A. That is Part I, Section 1, "Wages of employees." I do not now know of any demand by the employed that further legislation be had in regard to blacklisting in amendment of the law as it now stands. It forbids blacklisting. I allude to section 10 of the arbitration act of June 1, 1898.

After the "Chicago strike" there was a large number of employees thrown out of employment who have never been able to obtain employment again. It is alleged that these men would go to the railway managers and ask for certificates of good character to enable them to get employment elsewhere, but that the certificate obtained worked them harm rather than good, for by a method of writing the certificate or by use of certain watermarks, or other means, the paper of apparent recommendation proved to be notice to the person receiving it that the applicant was blacklisted; that there was a very large amount of this blacklisting done even where to all outward appearances strong letters of recommendation had been given. So much of a wrong had this become that when the arbitration act was enacted by the last Congress, approved June 1, 1898, in the tenth section, which is next to the last section, it is positively forbidden in any way to blacklist a man, and is made a misdemeanor to do so. I call the attention of the commission to this law. It is the act concerning carriers engaged in interstate commerce and their employees. . . .

Blacklisting, of course, is one of those evils which is extremely difficult to meet — to make any law which is effective against the practice. If a person does not wish to employ a

man, or wants to see that some one else does not employ him, the methods of doing so and preventing the applicant from gaining employment on other railroads are easily found, and it is very hard indeed to reach it by effective legislation. Congress has, however, put its stamp of disapproval on it and made it a misdemeanor, and I do not now know how to strengthen the law in this particular; still, I believe there is a necessity for at least making the attempt to stamp out blacklisting effectively, and I urge this commission to fully consider this subject with that end in view.

THE INJUNCTION PROCESS

"Proceedings for contempt" ought to be fairly looked into, whether the road is in the hands of a receiver or not, as the question is one in which the railroad brotherhoods of the country are to-day very much interested. Such employees should not be punished for contempt for acts done outside of the purview of the court. This matter has proceeded to such an extreme that in a case on the Northern Pacific Railroad the judge of the court enjoined Mr. Arthur, chief executive officer of the locomotive engineers; Mr. Sargent, chief executive officer of the firemen; Mr. Clark, chief executive officer of the conductors; Mr. Wilkinson, chief executive officer of the trainmen; Mr. Ramsay, chief executive officer of the telegraphers; and Mr. Wilson, chief executive officer of the Switchmen's Mutual Aid Association — all heads of their various brotherhoods and hundreds of miles away — from in any way consulting with the members of their brotherhoods in regard to the question of wages, or the hours of labor, or in regard to any question which was then in dispute. . . .

I know of nothing more exasperating to the wage worker than the apparent arbitrary action of the courts in the issuance of mandatory injunctions in this class of cases and subsequent proceedings for contempt. This use of the injunction fills

many of those who are deeply interested in the welfare of their country with great alarm. It is a matter of the greatest surprise to Englishmen to observe the way in which the power of the court is strained in this respect. An injunction is never issued there without the greatest deliberation. In this country it seems to be had for the asking, particularly whenever an employer desires to get the influence of the court thrown into the scale in his favor when a dispute between himself and his workmen arises. Whatever warrant there may be for the Federal courts to interfere in disputes between the carriers engaged in interstate commerce and their employees, it is straining power for the Federal judges to interfere in those disputes which are simply between those engaged in ordinary industrial pursuits and their employees. It is bringing the Federal judiciary into disrepute, and if something is not done to curb this unjustifiable act on the part of some of the Federal judges it will surely bring disaster to our institutions.

In the first place, a railroad employer or manager, anticipating a difficulty which is apparently about to take place, rushes to a friendly court. I want to state just for a moment in regard to the Lennon case. It is stated that the judge in this case was at his home in Cleveland and was summoned by telegraph ; was rushed through in the special car of the corporation to Toledo ; went to the offices of the railroad company, where the railroad officials presented their side of the case to him behind the closed doors of the railroad corporation, and where also he issued the injunction, and the first knowledge that the men had of the action was when the injunction was served on them. They had no opportunity — there was no chance for them to say a word, and there was no chance for them to explain to the court. The court took the one side at once and threw its whole influence to the railroad.

This commission will give the railroad employees, through their representatives, an opportunity to be heard, and they will

convince you that this is a question which needs the most careful consideration on your part. This is a matter which concerns every wage worker in the country. Their representatives will fairly present this question to you. There ought to be a law prohibiting courts of the United States from enforcing the specific performance of contracts for personal service by writs of injunction. The following bill to this effect has been suggested:—

“A BILL to prohibit courts of the United States from enforcing the specific performance of contracts for personal service by writs of injunction or other legal proceedings.”

* * * * *

though since the passage of the arbitration bill of June, 1898, I seriously doubt if any Federal judge will ever undertake again to force men against their will by injunction.

PECULIAR OBLIGATIONS

I do not come here — neither will the railroad employees through their representatives come here — and say that there are not circumstances under which a railroad employee is just as much bound to continue his employment as is a pilot on board ship in a dangerous sea way. A railway engineer dissatisfied with the terms of his employment has no business to leave a train load of passengers out on a prairie. A freight engineer has no right to leave his train in a position where it endangers the lives of others. There is right and reason in all things. The railway employee recognizes that to a certain extent he is performing a public service, and to that extent he is a public servant; that the railroad is performing a public service and he, as a servant of the railroad, owes a duty to the public which those engaged in the ordinary industrial pursuits do not.

The man engaged in the cotton factory, the man engaged in any ordinary vocation, can leave his employment at any time,

at any hour, and in any way, and the public cannot properly question his right to do that; but in the case of the railroad and the railroad employee the great overpowering third party, the public, has certain rights, and the railway employees recognize those rights. In that respect I think they differ from other organizations or employments. They stand on a different plane, occupy a different relation to the public; and as the general public has a right to demand from them certain service, they must have equal right to demand and expect from Congress such measures of protection as are warranted. If not provided for by the National Government, they are practically without such protection. Questions concerning those engaged in the ordinary industrial pursuits are largely matters for the several States to deal with.

Before leaving this subject, I desire to call attention to the Royal Commission on Labor, whose investigations began May 1, 1891, and whose final report was submitted June, 1894, in two volumes, the majority report signed by nineteen and the minority by four commissioners. Their work is comprised in sixty-five blue books, twenty-five being taken up with the testimony of witnesses. In addition to these reports, the blue book contains separate statements of the individual views of certain members of the commission of much interest and value. . . . These reports, majority and minority, of the above commission are most valuable, and should be in the library of this commission. . . .

GOVERNMENT OWNERSHIP

As to general government ownership and control of industries the discussion is endless, both in England and in this country. In regard to government ownership of railroads in the United States the discussion ought to be concluded, at least for the present, if facts are to govern the decision. Note, for example, a statement recently prepared by the Interstate

Commerce Commission, in compliance with a resolution of the Senate and submitted August 27, 1894.

"The freight rates," says this statement, "in the United States are, in general terms, only five-eighths of those charged on the Continent of Europe and a little less than one-half of those which prevail in Great Britain." As shown elsewhere in this statement, the railways on the Continent of Europe are largely owned and operated by Government. In Belgium, 71.81 per cent of the railway mileage is both owned and operated by the Government; in Denmark, 76.96 per cent so owned and operated; in France, 16.89 per cent; in Norway, 95.67 per cent; in Portugal, 37.86 per cent; in Prussia, including Finland, 50.75 per cent; in Sweden, 33.69 per cent; while in Austria-Hungary, 39.98 per cent of the mileage is owned and 73.36 per cent operated by the Government; and in Germany, 88.42 per cent is owned and 89.52 per cent is operated by the Government. . . .

NEGLIGENCE OF FELLOW-SERVANTS

The great conflict of authority respecting the rule as to when two employees are fellow-servants has caused various States of the Union to pass acts upon the subject. The proposed object of such acts is, generally, to correct either a previous bad statement or a previous bad judicial decision. Alabama, Massachusetts, Colorado, Indiana, and other States have passed employers' liability acts based upon the English act of 1880. In the case of railroad employees, these acts give the employees a right of action against their employers for injuries caused by reason of the negligence of any person having charge or control of certain railroad instrumentalities.

In some States the defense of fellow-servant's negligence has even been abolished in certain cases by statute; other States have no legislation upon the subject; and the United States Supreme Court has decided in the *Baugh* case, "against

the trend of some former cases," as Judge Acheson says, that in the absence of State legislation the question is not one of local law upon which the Federal courts are bound to follow the State decisions, but is one of general law upon which the Federal courts may exercise their independent judgment, uncontrolled by local decisions. Thus appears the anomalous condition of suits for damages in a State, based upon the same facts, which are governed by different principles of law, dependent upon whether the suits are brought in the courts of the State or in the courts of the United States. There is great need of legislation by Congress upon this point. A uniformity is very much to be desired in the legal principles governing such cases.

Again: A Federal court which sits in one State may enforce the statute of another State, where the injury occurred, although the local State courts of the State wherein the Federal court sits have refused to enforce such statute. Even a decision by a State court that no action can be maintained under a statute of another State is not binding upon a Federal court sitting in the first State in another like case: *Cox Case* (145 U. S. 593). There the "general law" doctrine also intervened and overrode the local statute. New legislation is necessary along this line, too, in order to clear up such conflict and confusion and to establish a uniform mode of procedure in all the Federal courts.

EMPLOYERS' LIABILITY

The weight of authorities establishes that a carrier is bound to the exercise of reasonable care with reference to all the appliances of its business, and is bound to protect its employees from injury therefrom by reason of latent or unseen defects so far as such care can do so; but the carrier is not an insurer to its employees against injury, and is only chargeable for damages happening to its employees from defective appliances when negligence can properly be imputed to the carrier.

I believe that an investigation by this Commission will show that the time has come when the Congress of the United States should declare itself in regard to these unsettled questions which are being so differently determined by different courts, and for which there exists no fixed rule of decision.

In England, considerable progress has been made in that direction. The state of the law there, as I understand it, is as follows: Under the old common law the employer was only liable in damages for injuries caused to any one by the negligence of his servants, and then an exception was made when the person knowingly incurred the risk. The courts held, on the ground that a workman when he engaged himself in any service was aware that in all employments the risk of injuries by the negligence of fellow-employees would be incurred, that an employer was not, therefore, liable to the workman for the injuries thus incurred. The first step to relieve the employee of this hardship was the Employers' Liability Act of 1880. At the time of its passage business men all over the country predicted ruin to the employers, but during nearly two decades of operation the predictions have not been fulfilled, and on the contrary it has been seen that the principle enunciated could be further invoked.

A bill entitled the Employers' Liability Act of 1893 was introduced in Parliament by Mr. Asquith, but it did not become a law. It was constructed along the lines of the act above mentioned, but in addition prohibited "contracting out." The Workmen's Compensation Act of 1897, operative July 1, 1898, and introduced by Mr. Chamberlain, is a further evolution of the principle. It, too, practically prohibits "contracting out" and at the same time makes the employer virtually the insurer of the employee. Instead of the negative exposition, this new act declares the employer liable for all injuries and excepts those occasioned by the serious and willful misconduct of the employee. A schedule of compensations or damages for which

the employer is variously liable is included in the act. These liabilities are so large that employers are compelled to resort to insurance companies, or, for cheaper indemnity, to mutual combinations. Contrary to expectations, the insurance companies have raised their charges very much, but it is conservatively hoped that the experience of a short period of time will prove the lack of necessity for such advances in rates.

This act, by fastening the liability upon the employers, makes a great stride toward the principle that the trades and industries in which an employee is engaged at the time of the injury should bear the burden of the relief and maintenance of the injured man and those dependent upon him.

Q. (by MR. C. J. HARRIS). Is there something about limit of liability in the English law? A. The bill provides That where personal injury is caused to a workman by reason of the negligence of any person in the service of the workman's employer, the workman, or, in case of the injury resulting in death, his representatives, shall have the same right to compensation and remedies against the employer as if the workman had not been in the employer's service. An exception to this is made where the workman, knowing of the negligence, failed, without reasonable excuse, to notify employer, etc. A contract made before the accrual of the right is not a defense. The employer, however, in case he has contributed to a fund providing any benefit for the workman, when sued shall be entitled, in the place of the workman, to any money payable out of the fund. And if the employer is sued and payment of a fine, under any act of Parliament in respect to the same cause of action, has not been paid, the workman shall not be entitled thereafter to receive any such fine.

Q. Do you know, as a matter of fact, whether they have limited liability by legislation there? A. To the extent I have stated.

The Act of 1880 makes the employer liable for injuries to

the workman caused by defect of machinery, negligence of a person in the employer's service intrusted with superintendence or with authority over the injured man, or any act or omission done or made in obedience to the orders or by-laws of the employer, or by the negligence of any person in charge of railway signals, etc., while the Bill of 1893 would make the employer liable to the injured workman where the injury was caused by the negligence of any person in the service of the employer. Both place the workman in the same position as if he were not in the service of the employer. By the Act of 1880 the employer was protected by exceptions in which he was morally innocent, while Bill 118 excepts him only when the employee, knowing of the negligence, failed without reasonable excuse to notify the employer, etc. The Bill adds, further, that a contract made before the accrual of the right is not a defense.

On the other hand, by it the employer, when he has contributed to a fund providing any benefit to the workman and the employer is sued, he is entitled, in the place of the workman, to any money payable out of the fund. And if sued and payment of a fine under any act of Parliament in respect to the same cause of action has not been paid by the employer, the workman shall not be entitled thereafter to any such fine. Unlike the Act, the Bill does not limit the amount of damages recoverable, nor does it limit the time within which the action must be brought. Both provide that the action must lie in the county court, but can be carried into a higher court.

CONFLICTING RULES

In some of our own States we have limited liability; that is, that a death claim cannot exceed \$5000. It is so in Massachusetts. Damages recoverable for death through negligence: \$5000 in Colorado, Connecticut, Illinois, Massachusetts, Maine, Minnesota, Missouri, New Hampshire, New York, Oregon, Pennsylvania, Wisconsin, West Virginia — 13; \$10,000 in

District of Columbia, Ohio, and Virginia — 3. Now, at least, the Congress should either do that, or it should endeavor to secure harmony of decisions of State and Federal courts.

The case of Baltimore & Ohio Railroad against Baugh (United States Supreme Court Reports, vol. 149, p. 368) is a very peculiar case. I want to state something about it in an off-hand way. Baugh was an employee on the Baltimore & Ohio Railroad; he was injured, and brought a suit in the State court. The Baltimore & Ohio Railroad, on the ground that it was a foreign corporation, had this case removed to the United States Circuit Court. It was tried in the United States Circuit Court. The court followed the decisions of the State court, and damages were awarded Baugh. The case then went to the Supreme Court of the United States on appeal from this decision — made by court of the carrier's own choosing — and the Supreme Court held that the railroad was not liable.

Now, you see this curious state of affairs: Here are two parallel roads. If the Baltimore & Ohio had been a corporation of the State of Ohio, his case would have been maintained in a State court, where undoubtedly he would have obtained redress; but here was a foreign corporation paralleling a State road, and Baugh was injured with impunity. The fact of being a foreign corporation deprived him of the protection of the laws of his State, and he could not recover for his injury. The court said that "there is no common law in the United States, but there is a general law"; and that seems to mean that any particular case is judged by such construction as any particular judge may see fit to find, without precedent to guide him. . . .

Here are a number of conflicting opinions — one judge says it is right and one judge says it is wrong; and if this Commission cannot come to the point where it feels that after a fair examination of this whole subject there ought to be a national law defining the liability of employers, at least it should recommend action such as is contemplated by the following proposed act:—

"AN ACT to secure harmony in decision of State and Federal Courts.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the decisions of the courts of last resort in the several States shall, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, be regarded as rules of decision in trials at common law in the courts of the United States, in cases where such decisions apply, and no distinction in this regard shall be made between cases involving questions of general and those involving questions of special or local law."

It seems to me that, as the time has come when almost every case involving railway employees reaches the courts of the United States, Congress can well enact legislation in regard to that class which the courts must follow.

Q. (by MR. PHILLIPS). Who suggested that law? A. I wrote it.

Q. (by MR. KENNEDY). Do the State courts accept the decisions of Federal courts as higher than their own? A. No, I think not; but the Federal court is presumed, where the statute of any particular State is in question, to follow the statute of that State and the decisions of the courts, as far as applicable to the case at issue.

THE FIRST LIABILITY BILL

I have also here a Bill which was introduced at my request by Mr. McEttrick, of Boston, in the Fifty-third Congress. I hardly expected that any legislation could there be accomplished, but I believed that time would bring the question to the front. The Bill was prepared with the greatest care, and is in line with the English Bill of 1893 regarding the same subject. . . .

(Mr. Moseley here read his Employers' Liability Bill.)

Q. Have some States adopted laws similar to that proposed

by you? A. Yes, indeed. The States, to a greater or less extent, are doing so. Every session, I might say, increases the number, and this is well, for it supplements what Congress has done.

(Mr. Moseley here read section 3 of the Bill mentioned.)

This is to prevent an employer from forcing an employee to sign an agreement releasing him from claim for damages by reason of the negligence of the employer.

(Mr. Moseley here read section 4 of the Bill mentioned.)

And I would state in explanation of it that the Baltimore & Ohio Railroad and other railroads — the Chicago, Burlington & Quincy Railroad, etc. — have what is called a relief fund, and every employee was required to contribute a certain amount of his earnings to the funds.

Q. Required by whom? A. By the employer, who also contributes to the fund.

Q. (by MR. FARQUHAR). Is that contribution on the part of the employees perfectly voluntary? A. Hardly, sir; it was virtually a condition of employment. It is voluntary in name; but if a man does not see fit to contribute, the road will probably find somebody better fitted to hold his position than himself. . . .

Q. (by MR. KENNEDY). Are railroad relief societies considered by employees as in some instances used to take away their allegiance from their unions, and to put it where their money is? A. That is a matter I will try to explain. Before the statute was enacted it became so onerous to the men that a desire was expressed to provide for it in what is called their Bill — Arbitration Bill. Congress responded to this and made it law that it should not be made a condition of employment or a condition of remaining in employment to contribute to any fund, etc., and since the passage of that law, June 1, 1898, I do not think that any railroad has endeavored to force their men in the slightest way in this respect.

Q. (by **MR. C. J. HARRIS**). In view of the decisions of the courts, will it be advisable to attempt liability legislation in this country to cover this whole ground? **A.** Limited as to the amount recoverable? You do not mean that if a man is killed, whether it is his own fault or not, then he gets so much? That is the case now, I believe, in Germany.

Q. Is that class of legislation being passed by foreign countries? **A.** Yes, sir; particularly in Germany.

Q. What would be the effect here of such legislation? **A.** This is a question of such importance that I cannot properly answer it offhand. As a matter of present impression, I believe it would not be fair to go to that extent. Let men understand they owe some care and caution when engaged in their work, not only to themselves, but to their employers. If a man is killed by his own negligence, purely as a matter of risk of his employment, he has been receiving increased compensation, or is presumed to be, for the hazardous employment he is engaged in. But where an employer has failed to put on an appliance which the law requires, or uses an unsafe one, or where the employer employs a man to manage or direct who is not a proper person and shows by his conduct he is not, I believe the employer should pay.

Again, to carry the fellow-servant idea to the extent of claiming that an Italian laborer, digging along the railroad track with a boss who says, standing over him, "Go ahead, what are you looking at," when he lifts his head — to maintain that he is a fellow-servant of an engineer who comes down a track at a tremendous rate of speed and cuts him in two, is not just from my point of view. He is kept at work by the representative of the corporation, who does not allow him to look up for safety, who says, "I am your eyes." To say the engineer is a fellow-servant and the railroad is not responsible is not right.

Q. Are not the State courts, as a rule, becoming more liberal toward the employee? **A.** Yes; there is a recent case in North

Carolina where the judge took very advanced grounds. A person was injured. It was held, by reason of the fact that the railroad did not use the appliance which experience had shown to be the best — safety appliances — that the railroad was liable. This was the Greenlee Case, decided by Judge Clark in May, 1898.

THE SAFETY-APPLIANCE LAW

In 1893 the Safety-Appliance Law went into effect. The first provision was that the engineer, on and after five years from the date of passage of the law, should be enabled to control his train from the cab; and just as the passenger train was at that time being controlled, so it was required that railroads should not run freight trains which were not capable of being controlled by the locomotive engineer — that is, by the use of the air brake and train brake; and that a necessary proportion of the cars should be equipped to enable them to do it. Of course that would vary. On roads running across the prairie it would not be necessary to have so many cars equipped as it would be in a mountainous country to enable an engineer to control his train.

This was the first provision. The second provision was that, after five years, no railroad engaged in interstate commerce should use cars which required men to go between them to couple them, and it stopped there; otherwise it would have been as gigantic a job as was ever forced upon anybody, as you can well imagine. If the law had said that any particular device was to have been used, it would have cost the railroads additional millions in paying royalties, etc., over the proper cost for the adoption of an automatic coupler to have applied them; and you can imagine what it would have meant to have turned the railroads over to the tender mercies of the patentee; but it was left to the economies of railroad transportation and those who made a study of them to work out the method of coupling which would relieve the men from the danger of going in between the cars to couple and uncouple.

What should be used to accomplish this end resulted in a great struggle. A great many roads were in favor of what is known as the Janney type of coupler, which is a vertical plane coupler, and which had been adopted by the Master Car Builders, while others advocated the continuance of the old type, the link and pin, which was claimed (and I believe it is true) could be made, and was made, automatic, so that this also could be used without men going in between the cars. Now the contest came between the two types of couplers, and it resulted in the general adoption of the M. C. B. coupler. The exigencies of railway operation require that the slack, which all of us have heard about, must be done away with, for to properly work the air brake you must have a solid train. Otherwise, when you undertake to use an air brake, each car becomes a battering-ram, so to speak. It is therefore necessary to make the train as solid as possible.

It is now claimed that a solid train can be moved with less power than can one with slack between the couplers. So the contest went on, and finally out of it the Master Car Builders' type of coupler won. Now, this type of coupler at the time the law went into effect was free from patents; anybody could use it — anybody could build upon that type of coupler. Of course there were certain claimed improvements on it upon which there were patents, but the general type of the coupler was free from patent rights, and a road could go into the market and get couplers as good as any one else had without paying a royalty.

Q. (by MR. FARQUHAR). Was this coupler the property of the Master Car Builders' Association and given to all the roads as a benefit? A. Hardly that. The first type was what was known as the Janney type, but Janney, prior to the passage of this law, released all claims he had to the patent to what was known as the contour line, so that anybody could make the M. C. B. coupler prior to the passage of the law. If they saw fit to use that style of coupler, they could do it without paying royalty to any one.

Q. Was this coupler adopted by the Master Car Builders' Association? A. Yes; and it has worked out so that about 75 per cent of the cars are now equipped with the M. C. B. type of coupler.

The next thing in the bill were the hand-holds. Many roads used no hand-holds or grab irons on their freight cars, though recommended to do so by the American Railway Association and the Master Car Builders' Association; some had them in one place on the car and some had them in another. The law required that all railroads should have hand-holds at the ends and sides of the cars. That was particularly important during the transition period, where the coupling had to be made between the old-fashioned coupler and the Master Car Builders' coupler, and therefore the switchmen had to get between the cars more than ever to couple up.

Then another provision of the law was that the drawbars of the cars should be of a maximum or standard height. Now Congress, instead of undertaking to determine itself or leaving it to public officials to do, left the railways themselves, through the American Railway Association, to establish and determine the height, which they did. And $31\frac{1}{2}$ inches was fixed to be the minimum height and $34\frac{1}{2}$ the maximum height for drawbars — 3 inches variation being allowed. This resulted in the saving of many lives. . . .

A short time ago Mr. Francis P. Hopwood, who is the railway secretary of the British Board of Trade, came to this country to look into the workings of this law; and while there has sprung up in Great Britain the same opposition encountered here (the expense of the change in Great Britain, it is claimed, would be about £7,000,000, or \$35,000,000), I believe Great Britain will ultimately follow our example and enact a safety-appliance law.

I hope no one will understand that, from any remarks of mine, I believe the individual railroad manager is a hard-hearted man

— that he has not a due regard for the welfare of men employed by him. The railway managers have as big hearts and, in the main, are as kind as anybody else. The Pennsylvania Railroad raised no opposition to the passage of this law, in fact, was friendly to it. The Chicago & Northwestern and other railroads took the same position, while still others I could name fought the bill with all the power they could.

Q. Has there been a decrease of expense to the railroads from the time of making this change? A. The loss in coupling pins and the loss in links and the breakages which occur in draw-bars — connected with the old style of coupler — is great; I have figures which show that it costs over \$2 a year to maintain each car; whereas it is found that the new type of coupler does not cost 50 cents to maintain, and if that ratio is carried out the result of this law is ultimately going to be a saving to the railroads of over a couple of millions a year in that respect.

Now, another thing. It should be borne in mind the absolute necessity that the freight locomotive engineer should control his train, particularly when running on a single track with passenger cars ahead of his freight train. The rear-end collisions at times in the history of railroads have been appalling, largely occasioned by freight trains running into the rear of passenger trains that have become stalled; but with the use of the air brake the control of the freight train is almost as complete as the passenger train. Freight trains can make a much faster time, because the engineer does not have to shut off steam miles away and whistle for brakes. Now they can run right up to a station before shutting off steam. It is increasing the facilities with which freight trains can be handled, and has enabled the railroad management to meet another great exigency of economy in present railway management. You will recall the time when the carload was 20,000 or 24,000 pounds. Trains are now being run where the capacity of cars is from 80,000 to 100,000 pounds. Of course the railroad employee is performing

a very much larger service than he ever did. His wages are not being reduced, but you have got to bear in mind that where an employee hauled or handled 200 tons in a train, he can now handle 600 or 800.

INCORPORATING UNIONS

Now, coming to the "associations and organizations of employees of railways and other carriers by land." Here is an act to legalize incorporation of national trades unions with the right to appear by their representatives, and that is a thing which the workmen of the United States, the people of the United States, scarcely realize. It is hardly known that there is such a law on the statute books. They have all the rights of an incorporation. If there is any advantage to be gained in the incorporation of capital, they have the same right to have a corporation where labor is the fundamental object. . . .

These enactments were largely brought about by an act of injustice by the receivers of the Reading Railroad, which was approved by a Federal court. Some time ago the Reading Railroad revived a regulation which had become an absolute dead letter to the effect that no employee should become a member of a labor organization, and if he did he should be discharged. The general manager of the railroad company called upon some of the railroad employees to come to his office and told them to cease their membership, and demanded that they hand to him the charters and documents belonging to the lodge in the place, and said he must carry out the directions of the receivers. "If you do not do it, I shall turn you off," said he. These men appealed to their brotherhoods, and particularly to the Brotherhood of Railroad Trainmen. They were all interested in it. At my suggestion they came to Washington to see Mr. Olney, who was at that time Attorney-General of the United States, and consulted with him about their rights. The Attorney-General believed that they were wrongfully treated, and said

he would see what could be done. He sent for the counsel of the Reading Railroad and urged him to rescind the order. The counsel said he would take it before the receivers and would endeavor to get them to do it. In a few days Mr. Olney got word from them that they proposed to carry out their rule, that any man belonging to a labor organization should be discharged.

Q. (by MR. FARQUHAR). Was that the order of the receivers that was to be carried out? A. The order of the receivers. Mr. Olney then suggested that before anything should be done in the courts they return and remonstrate individually with every receiver. They did so, but to no purpose, as they were virtually shown the door. Then Mr. Olney said, "Bring your bill in the court, asking the courts to enjoin the receivers," and the bill was brought. It was decided to have counsel, and the best that could be had in Philadelphia and Washington was obtained and went into the United States court there. The first thing the counsel for the railroad said was that this man Wilkinson, a representative of the brotherhood which brought the suit, was not an employee of this railroad, and was not a proper party complainant. Mr. Wilkinson's counsel replied that if he divulged the names of the men in whose behalf he was appearing they would be put on the blacklist and discharged, and he did not want to offer them up for that purpose. Mr. Olney believed it was fair that the bill should be brought by Mr. Wilkinson. The court held that if they wanted relief they must appear themselves, and dismissed the bill.

The case was then brought in the name of three employees, who were offered up as a vicarious sacrifice. As was known, the men were discharged, and, to the credit of the Pennsylvania Railroad, they took care of them. Mr. Olney filed a statement as "*amicus curiae*." I commend it to your attention as a fair presentation of the right of men to organize. And I want to say to the credit of the railroad employees, they went down to Harrisburg and got a law passed that would now put a re-

ceiver in jail who followed this precedent. The judge, however, rendered an opinion, though there were eight states in this Union that made it a criminal offense to deny a man employment or refuse to continue his employment because he belongs to a labor organization, that these receivers could use their employees as they saw fit.

THE ARBITRATION LAW

One object of the Arbitration Bill passed June 1, 1898, which applies only to railroads and their employees, was that without any surrender apparently of any ground which either side held — without any appearance of giving in — arbitration could be brought about. The Government, through its officers, after endeavoring to settle the matter by conciliation, steps in and says to the disputants, "This difficulty has gone far enough, and you had better agree to arbitration." Now, under these circumstances, the side that will not arbitrate will receive the public condemnation, for the public knows who is in the wrong; so now the wronged have a means of reaching public sentiment, of enlisting the public with them, avoiding strikes which interrupt the public in the enjoyment of transportation facilities, and which turn the public against the strikers, no matter if their cause is just.

What has been the result? I have asked every one of the representatives of the organization, and they say that the relations have never been so pleasant as since the passage of the law. It has been said to me, "We do not want to invoke the operation of that law, and our employers do not, and therefore they meet us on common ground with good feeling, and while we have to give in at times, they also give in; but we meet and we know if we do not settle it between ourselves, the Government will step in." Since the passage of that law there has not been the slightest murmur, and it meets the approval of every railroad man I have met. There are some who predict that there will

not be any more strikes. We really believe it is the era of good feeling.

ACCIDENT REPORTS

Now, another matter. If not a sparrow falls to the ground without Divine knowledge, why should American citizens, our people, be maimed and killed and no record of the circumstance attending the casualty kept? I believe there should be a requirement in case of a collision, or where persons or employees are killed or injured upon the railroads, that the Interstate Commerce Commission should be notified of it at the time it occurs. It would do very much to decrease the number of accidents upon our railroads. When you open the light of day upon such things, and give the public an opportunity of ascertaining the cause of injury to a man, either a passenger or an employee, you will find that eventually the number of killed and injured will be decreased.

Q. Have the railway commissioners of some of the States the right to do that? A. Quite a number of them have. Under their State laws they have the opportunity to investigate these facts. Many of our states have railway commissioners, while others of them pay no attention to the matter. The National Government statistics furnished by the roads also require revised classification. For instance, a man is hurt; he is reported as injured in coupling cars, when the real fact is he is running down a track and tumbles over a tie and falls down and gets hurt. He is reported as injured in coupling cars simply because he is engaged in that occupation. The means are not at hand to ascertain the actual facts. The commission has no means of learning the real cause of the injury.

Q. Could the Interstate Commerce Law be amended to reach such a case as that? A. I do not think there is the slightest doubt of it. I have a bill amending the Act to promote the safety of employees, etc., which covers this point, I think. It is as follows. . . .

Q. Would such reports to the Commission open the doors a good deal to suits for damages? **A.** I should not want to have the facts used in that way; none of these reports should be used in any damage suits, and it might be provided in the act that they should not be.

The intent is to call the attention of the public to accidents upon the roads. Of course to-day every accident is supposed to be annually reported to the Interstate Commerce Commission, and they have authority to ask for it. They may not have authority to ask for a monthly report. They can ask for annual reports, but that hardly gets at it. Reports at the time of the accident are what are desired.

Another thing, right here, almost under the shadow of the dome of the Capitol, men have been killed within the last few years by having their feet caught in frogs, and there they have been held as in a vise, and the train backs down on them and kills them. I now recall a case. It was a particularly distressing case. This poor fellow had a wife and a number of children. When he was killed, for a few hours everybody would tell you all about it. I followed the thing up. A dozen hours had not gone by before nobody knew anything about it at all; even his wife did not. She said: "I do not dare say anything about it, because my brother-in-law is employed on the railroad, and if I say anything about it, he will get his discharge."

I also have another bill to which I would call the attention of this Commission:

"AN ACT to promote the safety of employees upon railroads by compelling persons, firms, companies, and corporations operating railroads to equip their cars and locomotives with automatic couplers, continuous brakes, and grab irons; their locomotives with driving-wheel brakes; to provide a standard height for drawbars for freight cars and engines; and to adjust, fill, or block all frogs, switches, guard rails, and all other obstructions which are a part of, or are near,

their tracks as to prevent the feet of employees from being caught therein."

OTHER PROBLEMS

(Mr. Moseley's testimony was continued on December 7.)

MR. MOSELEY. With some care I prepared the statement which I handed you yesterday, "Authorities upon the law of damages caused from injuries received (1) by negligence of a fellow-servant, and (2) by defective appliances," which I again desire to call your attention to, as it affects railroad employees, because almost all their cases sooner or later get into the Federal court — the State courts have little to do with the suits of railroad employees for damages for negligence on the part of the employers.

Q. Do you think that a fellow-servant could be defined in a general law? A. I do not think there is any trouble in defining what a fellow-servant is. Many of the States are undertaking to define it. As I said yesterday, the railroad employees of the country are engaged in a semi-public employment — in a national work; if they obtain any redress at all, they must obtain it through the Congress of the United States. I have not gone into the field of the ordinary industrial pursuits or the relation between an employer and employee in such industrial pursuits, because I believe these matters are very largely under State control and ones which the people of each State should settle for themselves, as far as the relations between one citizen and another of that particular locality are concerned.

But when we come to the railroad employee, the case is different, for there is hardly a railroad in the United States that the courts have not held by their rulings is engaged in interstate commerce and therefore under National control, and where any difficulty occurs between employer and employee the Federal courts are the ones that are resorted to, that they may put the strong arm of the Federal power into the scales. Also where-

ever a case occurs of damage by accidents or any cause, it is almost sure to reach the Federal courts. Therefore I believe these are matters which, if Congress itself does not deal with and does not bring about uniformity in by legislation, — why decisions are as varying as are the ideas of the several judges, — judge-made law will continue to largely govern the determination of all these cases. . . .

THE PUBLIC AND THE ROADS

In regard to the relations of railroads to the public, it is almost sufficient to say that the Interstate Commerce Commission has been for nearly twelve years asking Congress for legislation which its experience in administering the Act to regulate commerce has shown to be indispensable to effective regulation in the public interest. As Secretary of the Commission, I have no other views on this subject than those which have been expressed by the Commission itself in its reports to Congress. Each of those reports constitutes the record of a year devoted to the work of regulation. The Chairman and other members of the Commission wish me to say that they will be glad to give you the benefit of their views as to any of these matters at any time. One or two of the conditions now prevailing will, however, doubtless interest you at this time, and I will mention them briefly.

The Act to regulate commerce requires that all rates shall be reasonable and just. It also provides that the Commission shall execute and enforce its provisions. For fully ten years the Commission proceeded upon the idea that its duty to execute and enforce the law involved the issuance of orders to carriers not to exceed the rate shown to be reasonable or just after complaint, hearing, and investigation. In 1897 the Supreme Court said that this view was wrong; that the Commission was not authorized to prescribe rates for future observance by the carriers, and that the Commission could only condemn the rate

complained of, and incidentally award reparation. (The Freight Bureau Cases, 167 U. S., 479.)

Condemning the present rate and awarding reparation is theoretically the remedy at common law, though as a matter of practice no one ever recovered a cent from a carrier for charging an unreasonable rate. In other words, the common law did not and does not afford a remedy. But beyond that, merely proceeding to recover excessive charges is no remedy. First, because the expense always involved in litigation must generally, of itself, deter the institution of such a proceeding. Second, because the person entitled to reparation is generally not the person who is injured. The rate, however excessive, is supposed to be published, and the goods have been bought and sold on the basis of that rate. Obviously, the persons most likely to suffer injury are the producer and consumer, and sometimes the retailer, not the middleman or jobber, who is most frequently the shipper, and therefore the one who might be held entitled to recover the excess charge.

Q. (by MR. C. J. HARRIS). If parties do not obey decisions of the Commission, are they obliged to do so or not? A. Yes, sir; the carriers do very often comply with the orders of the Commission. But they will not if they consider that anything vital is involved. Of course the Commission may bring suit in court to compel obedience to its order. The average time consumed in reaching final adjudication in such cases by the Supreme Court has been about four years. This practically denies the relief that obedience to the order might afford, and, in fact, enables the carrier to snap its fingers at the rulings of the Commission. Now, if the Commission were empowered, after hearing an investigation in particular cases, to fix the maximum reasonable and just rate, and if the law also provided that the order of the Commission should become effective unless the carrier shows it to be unlawful upon application to the court for review, the result would be that relief would be granted as

to all future shipments to the producer, to the consumer, to the retailer, and to all parties interested ; and such relief would be summarily enforced unless the carrier could promptly show material error in the decision of the Commission.

A decision finding that the rate on flour from Minneapolis to Boston is ten cents too high and an order not to charge, say, more than twenty cents for that service, would benefit the Western miller and the New England consumer, as well as all intermediate handlers of that commodity. If you can say what the rate is to be, you benefit all who are commercially interested. If you can merely say the present rate in a particular case is wrong, you benefit only the man who has paid that rate in the case in question. As the law now stands, the Commission cannot order carriers to observe the rates which it finds, on investigation, to be actually reasonable — sufficient for the service rendered — and those orders which it does issue are practically non-enforceable because of inevitable long delay in the courts under the present procedure.

When the Act was passed, it was supposed that the Commission had full power to correct the tariff rates, and that its orders, except on plain showing of material error by the Commission, would be summarily enforced by the courts. The Commission cannot determine and order the proper rate, and when it asks the court to enforce any order that it makes, the case must be tried *de novo*, and, as before stated, the average time consumed in the courts has been about four years. Another present condition is shown in case under the tenth, or penal, section of the law. If the published rate from Washington to New York is \$6.50 and the road carries a man for \$3, the company's agent cannot be convicted of unjust discrimination unless it be shown that somebody paid the \$6.50 rate. And so it is with freight. The published rate may be so high that a shipper cannot use it, but at the same time the railway agent may give a favored large shipper a much lower rate, and he will, in consequence, gradually secure a monopoly of the business.

Q. (by MR. PHILLIPS). Would that result in small shippers not being able to ship at all? A. Precisely so. We have had plenty of such cases, but the courts will not hold it to be unjust discrimination unless some one, by actually paying a higher rate, is shown to have been wronged. In one case nearly \$12,000 were expended in proof in a case against the former receiver and president of the Santa Fe road. It appeared that some million of dollars had been paid out by that road in rebates, and that large amounts were paid to shippers of cattle. But it was not practicable to prove who was injured. Those who actually shipped had a monopoly of the trade.

THE TRUSTS

No one thing has operated to the advantage of the large shipper — the trust — or to the detriment of the small shipper — the individual manufacturer or dealer — so much as this vicious railway practice of allowing rebates from tariff rates to large customers. Indeed, it has been said that without railway favors the industrial combination could not exist. Whether that statement is accurate or not, it is acknowledged by all who have given thought to the matter that cutting off this railway rebate advantage would most seriously cripple those great foes to individual enterprise.

The tendency of trusts is to lessen the number of employers, of establishments, and employees, and this to my mind is the alarming feature about them.

When establishments are many and a man who has spent his best energies, the efforts of the best years of his life, in acquiring a trade, finds himself differing with his employer as to hours of labor, conditions of service, or wages, he loses no whit of his manhood, no particle of his independence, for the reason that, if the differences are irreconcilable, the workman can lay down his tools and seek another situation.

But when the trust absorbs the scattered establishments into

one organization, closes the more expensive and less profitable, and concentrates the production into a few favored localities, the workman is in danger of losing his identity as a man, sinking into the dependent condition of a part of the machinery of the institution. He becomes in a measure helpless, for an individual difference now with his employer means a loss of his means of livelihood — a shutting of the only door of opportunity to work at his chosen vocation. The responsibilities of family cares, which should add dignity and nerve to the man, are only weakness and a burden to the machine and make cowards of brave men for very love's sake. He dare not risk their lives and happiness by so much as a feeble protest at the wrong against which his manhood revolts, in fear that, losing his one chance of employment, he must start life anew or enter the ranks of the day laborer, already overcrowded and underpaid.

There is but one way which suggests itself to me by which labor may combat the evil of the trust, and that is far from being entirely effective. It is by thorough organization. This will not control — indeed, should not interfere with — the management or financial success of the institution. It will not always save the reduction of establishments and employees. But it will have the effect of preserving his identity and manhood; will give him the courage that is always born of numbers; secure an audience, the whole public, if necessary, for the relation of his wrongs; insure him, as an integral part of the machinery, the wholesome respect of the administration of the establishment.

With all his fellow-craftsmen behind him, his situation becomes infinitely improved, not only socially, but in the public eye. His pleas and demands receive consideration, when delivered through the megaphone of his order, whether in the shop, in legislative halls, or in the courts, to say nothing of the beneficiary effects of such organization in substantial relief as well as social sentiment. Every encouragement should be

given to organization; every trade should be organized; and when the wage earners stand shoulder to shoulder, the trust must still be feared, but its evils will have been mitigated so far as labor can accomplish such a result. . . .

ATTITUDE OF RAILROAD MANAGER

There are no more progressive men in any walk in life than the managers of railways, and to say that they are other than fair and considerate would not be just; indeed, it is difficult to find among them individuals who are not all that any one has a right to expect so far as the treatment of their employees is concerned. Many of them have sprung from the ranks. One speaks of the railway corporation, but he speaks of it collectively. It must be understood that the railways have done a great deal in the interest of their men, as their railway hospitals, their relief associations, their work under the auspices of the railway branch of the Young Men's Christian Association, and many other agencies for good will testify. No remarks that I have here made are made with any view of disparaging, in the least degree, the managers of railways, for whom I have the greatest respect, but it is to state conditions as they exist as fairly as I can.

Great credit is due and should be accorded the American Railway Association and the Master Car Builders' Association, both of which had established such rules as to safety appliances and regulations as would, if they had been carried out by every railroad, have made legislation unnecessary. It was from the very fact that their recommendations were being lived up to by some roads and not by others that the chaotic condition existed which required the law to unravel and correct. Both of these associations have done a great deal for the railway employees as well as having been of great advantage in devising means looking to economy in railway operation. There is no class of men in the country more ready to respond to the calls of humanity and of justice than are those who operate railroads.

But in the matter of railway regulation, it is difficult for some railway managers to believe that business methods which are in use in every line of business should, if adopted and pursued in the operation of railways, be made criminal violations of law. The railway manager in the past has believed that his first duty was to the stockholders and investors in his property, and he neither relishes nor admits the right of interference in what was so long a private institution that he has forgotten in a measure his own official character and the rights of the public in an enterprise which the people have chartered by their votes, have given their lands for the right of way, have granted the supreme weapon of eminent domain to coerce unwilling individuals, have given millions of acres and billions of dollars to establish, and which in the opinion of many people, intelligent and otherwise, the people should themselves own. If open to criticism on any point, it is not a lack of humanity to their men, not in the intelligent management of the stupendous business under their control, not in the liberal and progressive spirit in which they have carried that management to the front rank in the world's system for safety, speed, comfort, and luxuries of transportation, — but in an impatience of restraint, a resentment against suggestions from without, a failure to see good in the law, or good will in those called on to enforce it, though of both there are abundant evidences that only the willfully blind can fail to see.

A REVIEW

When I first came to Washington, I early recognized the advantage of location and opportunity, in the matter of furthering legislation in the interest of the wage worker, particularly of the employees of railways, now some 874,000 in number, the public character of whose employment secures them greater attention and consideration, at the hands of Congress, than the average breadwinners in other vocations.

To assist as far as was in my power in this regard, I deemed my duty, found in that effort the keenest pleasure, and it is with no little pride that looking backward over that twelve years the boast is mine that nothing was left undone on my part to help the cause as I saw the situation then or recall it now.

You will therefore understand with what satisfaction I have hailed the creation of this Commission, which, though it secures not a line of legislation directly, will have performed a great work of education and reform by its exhaustive investigation. It is the forum for the presentation of those questions which vitally affect the life of the nation, questions of vastly more importance than those connected with our foreign relations, and upon the proper settlement of which the stability of our Government depends.

In these years of effort for the amelioration of the condition of labor and of intimate intercourse with the officers of their associations who so ably represent them, I have been more and more impressed with the high character of both.

The representatives of the railway employees who have been sent here to ask for legislation in their behalf command respect and win regard, and with those who do the no less important local work are imbued with a sense of responsibility not only to the men they serve, but the country at large. They are conservative, law-abiding men, and they have neither asked nor advocated any legislation which cannot be justified upon the ground of right, or defended from the vantage ground of humanity and a higher civilization.

I have memoranda of the bills I have suggested as follows : —

“An Act for the protection of railroad employees by requiring railroads to block their frogs, switches, guard rails, etc.”

“An Act to secure harmony in decisions of State and Federal courts to overcome the injustice to employees occasioned by decisions of the character of the Baltimore & Ohio against Baugh.”

"An Act relating to the liability of employers engaged in interstate and foreign commerce for injuries to their employees, to bring the United States in this respect as near as may be to the laws of Great Britain in regard to employers' liability."

"An Act to promote the safety of employees and travelers by requiring carriers to report all collisions and accidents which may occur upon railroads engaged in interstate commerce with the causes and circumstances connected therewith limited to certain classes of accidents." This is in line with the laws of Great Britain.

RAILROAD ACCIDENTS IN THE UNITED STATES

By EDWARD A. MOSELEY. (In the *Review of Reviews*, November, 1904.)

A glance at the published statistics is sufficient to show that there has been a considerable increase in the number of railroad accidents since 1902, but a mere comparison of totals is of little or no value. What is wanted is a statement of causes and some practicable suggestions concerning remedies. The chief object for which accident statistics are gathered is the improvement of conditions, — the indication of such remedial measures as will add to the safety of life and limb. It may be a matter of interest to the statistician to know that the total of certain classes of accidents is greater or less now than formerly, but such information possesses little interest for the general public. What the public wants to know is why railroad accidents are increasing, and it has become apparent to the Interstate Commerce Commission that the great thing to be accomplished by its statistics is that they shall indicate that "why" with sufficient clearness to suggest a remedy.

On March 3, 1901, the President approved an act which makes it "the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in inter-

state commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, D.C., a monthly report, under oath, of all collisions of trains, or where any train or part of a train accidentally leaves the track, and of all accidents which may occur to its passengers, or to its employees while in the service of such common carrier and actually on duty, which report shall state the nature and causes thereof, and the circumstances connected therewith."

Publication of the causes of railway accidents, as reported by the railroad companies themselves, places the salient facts pertaining to them before the people and affords a basis for intelligent action in the introduction of remedies, which will safeguard the life and limbs of travelers and employees upon railroads. The commission therefore publishes quarterly bulletins based upon these monthly reports. In these bulletins the total number of accidents reported in each quarter is given. The accidents are separated into classes, and the causes of the most prominent train accidents reported are given. Twelve of these quarterly bulletins, covering the years ending June 30, 1902, 1903, and 1904, have already been published. The classification adopted and the total of accidents reported for the three years above mentioned are shown in the chart.

There are certain accidents which occur with more or less regularity and frequency on railroads that may be properly called unavoidable. Such are accidents due to exceptional elemental disturbances, entirely unexpected landslides or wash-outs, want of ordinary precaution on the part of passengers or employees, malicious tampering with railway or equipment, broken rails, etc. Such accidents may be accepted as among the ordinary hazards of railroading and be dismissed from our reckoning. We deplore the casualties which accompany such accidents, just as we deplore the loss of life that accompanies the destruction of a ship in a great storm at sea, but in the one case as in the other we know that no human foresight could have prevented the casualty.

There are casualties, however, which are fairly preventable, and against the occurrence of which travelers and employees upon railroads have a right to demand protection. When we are told, therefore, that the deaths in railroad accidents increased from 2819 in 1902, to 3554 in 1903, and 3787 in 1904, and that the injuries increased from 39,800 in 1902 to 45,977 in 1903, and 51,343 in 1904, it is important for us to know whether the increase was due to preventable or unpreventable causes.

Roughly speaking, then, and considering passengers only, we may say that the train accidents represent the preventable class, while the other accidents, such as "coming in contact with overhead bridges, structures at the side of track," etc., "falling from cars or engines, or while getting on or off," and "other causes" represent the unavoidable accidents. They are generally due to negligence on the part of the victims themselves. This separation will enable us to construct the following table:—

	PREVENTABLE ACCIDENTS		UNPREVENTABLE ACCIDENTS	
	Passengers Killed	Passengers Injured	Passengers Killed	Passengers Injured
1902	167	3,586	136	2,503
1903	164	4,424	157	2,549
1904	270	4,945	150	3,132

This table shows that the greatest increase in the deaths and injuries to passengers during the past three years has been in the preventable class. An examination of individual cases, as reported in the quarterly bulletins, will disclose causes and help to indicate remedies.

THE HUMAN ELEMENT IN THE PROBLEM

Take item 2 in Bulletin No. 7, for the quarter ending March 31, 1903. This is a rear collision in which seven persons were

killed and seven injured. "A passenger train ran into a freight train; personal injuries aggravated by fire in stoves in cars. A brakeman neglected to flag passenger train; had been a train brakeman 16 months." In this case it is apparent that the whole question of safety depended upon one man,—the brakeman who neglected to flag. It would seem that a properly operated block system would have been an added safeguard, and in all probability would have prevented the accident.

Item 8 is a rear collision resulting in four deaths and three injuries, which occurred in spite of the block system, and illustrates how greatly the safety of trains is dependent upon the vigilance and strict attention to duty of employees, even where the most approved safety devices are employed. "Occurred 4 A.M.; passenger train ran into two locomotives coupled together; clear block signal wrongfully given. Signal man's attention being momentarily withdrawn from his signal levers, a messenger boy, without authority, cleared the signal. Signal man's age, 19 years, 10 months." This operator was young, and obviously of little experience. He undoubtedly disobeyed the rules of the company in allowing an unauthorized person to enter the tower and have access to the signal levers.

Item 15 is a rear collision between passenger trains, resulting in twenty-three deaths and eighty-five injuries, which also occurred in spite of the block system, and is a further illustration of how completely the lives of passengers are in the hands of employees. "Collisions on long tangent; night; engineman running very fast, disregarded distant and home block signals, also three red lanterns at different points. This engineman was killed. His eyesight was perfect one year before the accident. The road has no periodical examination or test of enginemen."

The engineer had had ample experience, and his record was good. There is no explanation of his neglect to obey the signals except an unconfirmed newspaper statement that before he died he said that his attention had been drawn away from the

signals by some trouble with an injector. The fireman was not held in any way responsible, as his duty was at his fire, which required his entire attention.

A THIRD MAN ON THE ENGINE

To permit his attention to be distracted by any trouble with an injector under such circumstances was certainly inexcusable on the part of the engineer; but whether this be the true explanation or not, the fact remains that some unusual circumstance caused a momentarily fatal lapse on his part. The circumstances in this case add weight to the argument, which has been extensively agitated of late years, for three men on these modern high-speed locomotives. Many of these engines are so constructed that it is a matter of extreme difficulty for the fireman and the engineer to communicate with each other while the engine is running. The fireman is also compelled to devote his entire attention to his fire, and must be constantly on the alert in order to keep steam up to the required pressure. He has no time to watch the signals, nor can he note the actions of the engineer, and under such conditions an engineer might drop dead or meet with an accident that would disable him for the performance of his duties without the fireman knowing anything about it. In such a case the train could easily go to destruction before the fireman had had an opportunity to prevent it. With a third man on the engine, however, whose duty it would be to assist the engineer and keep a lookout for signals, this danger would be averted. It is fair to assume that had there been a third man in the engine in this case under discussion, this terrible accident would not have occurred.

THE BLOCK SYSTEM

There are 67 collisions and 1 derailment noted in these bulletins, resulting in 270 deaths and 734 injuries to passengers and employees, which might have been avoided had the block system

been in use. Twenty collisions resulting in 70 deaths and 391 injuries to passengers and employees occurred where the block system was in use. The great majority of these accidents were caused by the negligence of employees, either in giving wrong signals or in failing to observe and obey signals properly given. Five of these 20 collisions, however, resulting in 9 deaths and 44 injuries, occurred because the rules of the railroads on which they took place did not require a strict interpretation of the block system, — in other words, the system was permissive instead of absolute, permitting two trains to occupy the same block at the same time, the following train having instructions to run at reduced speed and keep a lookout for the preceding train. It is perhaps needless to say that under permissive rules the advantages of the block system are largely neutralized. Such rules permit the movement of a greater number of trains over a given section of track in a given time than would be the case were the absolute block system in use, and they may be necessary, at times, to prevent congestion of traffic; but wherever permissive blocking is allowed, it must happen that a great measure of the protection afforded by the block system is destroyed.

DEFECTS IN TRAIN-ORDER SYSTEM

The greatest number of collisions reported in these bulletins were due to failure of the train-order system in some of its parts. Dispatchers gave wrong orders, or failed to give orders where they were required; operators failed to copy orders correctly, or did not deliver orders that should have been delivered; conductors and engineers misread, misinterpreted, overlooked or forgot orders. Seventy-five accidents of this class are noted, resulting in 188 deaths and 828 injuries to passengers and employees. Many of the most distressing collisions that have occurred in this country were due to mistakes in orders, and the regularity and frequency with which such accidents occur emphasize the necessity for radical improvement in the methods

of handling trains by telegraphic orders or the abolition of the train-order system entirely.

It is noteworthy that 4 of the above 75 collisions, resulting in 14 deaths and 84 injuries to passengers and employees, and a property loss of nearly one hundred thousand dollars, were due to identical mistakes in reading orders, — the overlooking of "2d" or "second." The following is a typical example of this sort of error: "Conductor and engineman of one train misread orders. They had a '19' order against 'Second No. 1,' but read it 'No. 1'; engineman was killed. Being on form 19, the order was not read by the operator to the conductor and engineman." This mistake caused a butting collision between a passenger and a freight train, in which 4 persons were killed and 60 injured. It may be observed that the collision at Warrensburg, Mo., on October 10, in which 30 persons were killed and an equal number terribly injured, was another instance of this sort of error. Such identical errors emphasize the need of some change in the scheme of numbering or naming trains or in writing the numbers or names in dispatchers' orders.

A collision between a passenger and a freight train, in which 22 persons were killed and 25 injured, was due also to misreading orders. The conductor of the freight train read 1 hour and 20 minutes, but the order was written 20 minutes. Collisions due to operators copying orders wrongly or failing to deliver orders are numerous. One collision was due to the engineer of one of the trains misreading the name of the station written in his order. Mistakes of dispatchers are not so numerous, but there are several cases of lap orders and failure to make meeting-point.

OVERWORKED TRAINMEN

The following cases (rear collisions resulting in 5 deaths) are typical of a condition concerning which there has been much complaint of late: "Local freight standing at station; 12 hours late; no flag out; weather foggy; men on duty 25 hours 30

minutes." "Engineer failed to properly control speed; had been on duty 22 hours, with 5 hours' rest within that time." "Flagman, who had been ordered to hold one of the trains, went into caboose to get red light; sat down to warm himself and dry his clothes; fell asleep; had been on duty 16½ hours."

It is undeniable that many of the accidents which occur are largely contributed to, if not directly caused by, the long hours of duty to which trainmen are subjected. Could we trace the events to their first cause, we should doubtless find that many of those cases of misreading, overlooking, or forgetting orders were due to the fact that wits were dulled and senses benumbed by lack of rest. In the distressing wreck at Glenwood, Ill., last summer, in which a large number of excursionists were killed and injured by a freight train running into a passenger train, the evidence at the coroner's inquest showed that the freight engineer (whom the officials of the road said "disregarded plain orders and acted like a crazy man") had been on duty more than 20 hours. In commenting on this case, it was pertinently said by one of the Chicago papers that "the officials of the company might as well fill their engineers and firemen with whiskey or drug them with opium as to send them out for 15 and 17 hours of continuous work expecting them to keep their heads, apply intelligently the general rules of the road, and give exact obedience to all orders."

It was pointed out on behalf of the company in this Glenwood case that the company rules permitted employees to take 10 hours' rest after they had been on duty 16 hours. It is a universal rule with railroad companies to permit a period of rest after a certain period of duty before employees are called upon to go on duty again. But the trouble is that these rules are permissive, not mandatory. They do not compel employees to take rest unless the employees themselves think they need it, and, as a consequence, the necessities of the roads, growing out of the movement of traffic, coupled with the greed of the men,

who in many cases overwork themselves in order to achieve a big month's pay, render the rules of little or no effect.

Again; there is no well-organized system of relieving crews on the road after they have been on continuous duty for an excessive number of hours. It is a common practice, when crews ask for rest in the middle of a trip, to run them into a side track, out on the road, and let them sleep on the train before completing the trip. The sort of rest that men get while lying down in a cramped position on an engine, while fully clothed, is not satisfying, and cases are reported in our bulletins where men have pulled right out of a side track in the face of an opposing train, after such a period of rest, under the impression that the train had gone. Furthermore, the construction that is likely to be placed on these rest rules of railroad companies is obvious from a quotation of the rule in force on one of the most prominent roads in the country, as follows: "When train or yard men have been over 10 hours on continuous duty, they will, after arrival at the terminus, be entitled to 8 hours' rest without prejudice, except when necessary to avoid delay to live stock or perishable freight." It will be noted that the period of rest is allowed only after arrival at the terminus, and then only when it will not delay the movement of live stock or perishable freight. When it is considered that in one of the accidents noted above the train crew had been on duty 25 hours and 30 minutes, and had not yet arrived at the terminus, it will be seen how little relief is afforded by such rules in many urgent cases.

There can be no doubt that the railroads generally have worked under many disadvantages of late years. The necessities growing out of the movement of extraordinary volumes of traffic, and the demands of the public for increased and faster train service, have taxed the facilities of the roads to their utmost, leading to the placing of many inexperienced men in responsible positions, to the overworking of men, and to a disregard of many safeguards that under ordinary conditions

would have been strictly observed. There is a tendency in certain quarters to refer many of our railroad casualties to the great American tendency to rush things, and I have even heard it remarked that the public demands the service and must accept the dangers incident thereto; but this is hardly a fair way of looking at the matter, and, when the public is confronted with a mass of purely avoidable casualties, it is proper to ask if it is not time to call a halt and insist on the introduction of such safeguards as will reduce such casualties to a minimum, even though it may result in a lessening of the characteristic hurry and bustle with which Americans are accustomed to move about from place to place.

THE BRITISH SYSTEM OF REGULATION

It is pertinent to inquire if the time has not arrived for a more effective system of railway regulation, following the example of Great Britain. Under the Regulation of Railways Act of Great Britain, railway companies are required to report accidents to the Board of Trade in such form, and giving such particulars, as the board may direct, by the earliest practical post after the accident takes place; and, furthermore, the board has power to direct that notice of any class of accidents shall be sent to them by telegraph immediately after the accident takes place. The board may direct an inquiry to be made by one of its inspectors into the cause of any accident, and, whenever it deems necessary, it may call in experts and magistrates to assist its inspector in making a more formal investigation. The persons holding this formal investigation have all the powers of a court of summary jurisdiction, and may enter and inspect places or buildings, require the attendance of persons and answers to such inquiries as they see fit to make, enforce the production of books, papers, and documents, administer oaths, and are generally clothed with such powers as will enable them to get at the facts. The inspectors of the board, and the persons

acting with them in making formal inquiries, as set forth above, are required to make a report of the results of their investigations to the Board of Trade, and the Board of Trade is required to make public every such report.

It is also competent for the Board of Trade to appoint an inspector or some person possessing legal or special knowledge, to assist coroners in holding inquests on the death of persons killed in railway accidents, reports of such inquests to be made to the Board of Trade and to be made public in like manner as in the case of a formal investigation. There can be no doubt that this rigid supervision and investigation of accidents tends to promote the safety of both travelers and employees, and to improvements in operation and working brought about by the recommendations of the Board, as a result of these investigations, may be attributed a great share of the comparative immunity from serious railway accidents which the people of Great Britain enjoy.

In this connection it is proper to say that the Interstate Commerce Commission has made no recent comparisons between the accident statistics of the United States and those of foreign countries, and the recent statement that has been going the rounds of the press, purporting to give the total of persons killed and injured on the railroads of this country and Great Britain in 1904, and making comparisons between this country and Great Britain, is entirely unauthorized. The Commission has made no such comparisons, and the only figures for 1904 that have yet been compiled are those appearing in this article.

REMEDIES PROPOSED

Summarizing the remedies suggested by the above exhibit of causes, they are :—

1. An extension of the block system as rapidly as practicable, and its strict interpretation on lines already blocked.
2. A radical reform in the train-order system as applied to

single-track roads, or its entire abolition, substituting the electric staff or tablet system, as has been done in Great Britain.

3. The introduction of rigid rules governing the hours of labor of railroad employees engaged in train service.

4. The employment of a third man on all modern high-speed locomotives.

5. An extension of the practice of employing two conductors on heavy high-speed trains, one to look after the running of the train exclusively and the other to look after the tickets, as is now the practice on several of the transcontinental lines.

6. The employment of only experienced men in responsible positions.

7. An extension of second, third, and fourth track mileage as rapidly as practicable, to accommodate the growing necessities of traffic.

THE PENALTY OF PROGRESS

By EDWARD A. MOSELEY. (In the *Independent* June 11, 1908.)

It is impossible for me to give the subject of industrial accidents exhaustive treatment within the necessarily brief limits of an article of this character, nor shall I attempt it. I can only hope to indicate the proportions of a problem which, in my judgment, is of transcendent importance in its bearing upon our welfare as a nation, and point out what has been done toward its solution in the comparatively limited sphere of Federal activity.

SOCIETY CANNOT BE INDIFFERENT

Society cannot be indifferent to the need of its widows; it cannot safely ignore the cry of children made fatherless by methods and machines which typify our present wonderful industrial development. If the elements of national vitality, prosperity, and happiness are sapped to produce such development, it is purchased at too great a price; and in our strenuous

attempts to write down industrial results in big figures it is high time we paused to count the cost in human life and limb.

The most commendable feature of the Roosevelt administration, the fact that stands out most prominently as entitling it to popular approval, is the consistent effort that has been made to awaken the public conscience in industrial matters and secure justice for wage earners. The keynote of this effort was struck by the President in his Georgia Day speech at Jamestown, when, in discussing the question of industrial accidents, he said: "Legislation should be had, alike from the Nation and from the States, not only to guard against the needless multiplication of these accidents, but to relieve the financial suffering due to them. It is neither just, expedient nor humane; it is revolting to judgment and sentiment alike, that the financial burden of accidents occurring because of the necessary exigencies of their daily occupation should be thrust upon those sufferers who are least able to bear it, and that such remedy as is theirs should only be obtained by litigation which now burdens our courts."

WORKINGMEN'S COMPENSATION

The remedy proposed by the President is a workmen's compensation. He rightly judges that only by increasing the financial responsibility of employers for the death or injury of their employees can industrial accidents be reduced to the limits of the unavoidable. Said the President:—

"Congress should adopt legislation providing limited but definite compensation for accidents to all workmen within the scope of the Federal power, including employees in navy yards and arsenals. Similar legislation should follow throughout the States. The old and inadequate remedy of suit for negligence would then gradually disappear. Such a policy would mean that with increased responsibility of the employer would come increased care, and accidents would be reduced in number."

One who has given but little thought to the subject may think the President's language somewhat radical, even revolutionary. Careful consideration, however, will convince an impartial investigator that Mr. Roosevelt has not overstated the injustice which society imposes upon wage earners and their families by requiring them to bear the whole burden of industrial accidents; and the remedy proposed, namely, a definite compensation act, is, as the President well said, only a step towards securing "fair and equitable treatment for each and every one of our people."

PROFESSIONAL RISK

It is well known that the constantly recurring accidents in all industrial occupations result in a certain constant ratio of killed and injured, which is known as the "professional risk" of the employment. In Great Britain and the countries of Continental Europe it is the theory that this risk should be borne by the employer, since the labor of the employee is an absolutely necessary factor in the conduct of industry, and the employer derives all his profit therefrom. The employee is, therefore, entitled to compensation for any damage which he may sustain (affecting his earning power or his ability to maintain himself and his dependents), while in the exercise of his vocation. This theory finds its legal expression in the Employers' Liability and Workmen's Compensation Acts of Great Britain, and in numerous statutes modifying the common law rules of master and servant in Germany, France, Switzerland, and other countries of Continental Europe. There is no question about the compensation to which an injured workman is entitled, and he receives it without recourse to an action at law.

In the United States, however, although he is theoretically endowed with greater political power than in any other country on earth, the wage earner has had no such protection. He has been forced to go into court to obtain compensation for

injuries received as an incident of his employment, and he labored under the additional disadvantage of having little or no statutory protection, especially in those employments that came within the jurisdiction of the Federal courts, such as work for interstate common carriers. In such cases an injured workman must show that his injury was undoubtedly caused by the negligence of his employer, and he must do this under common law rules that placed the employer practically beyond the reach of liability.

CASE OF FIREMAN BAUGH

Reference to a leading case, namely, *Baltimore & Ohio Railroad Company v. Baugh*, 149 U. S. 368, will illustrate the disabilities under which railroad employees have labored and emphasize the need of Federal legislation for their protection. Baugh was a locomotive fireman, who received an injury through the negligence of his engineer. He began an action for damages against the Baltimore & Ohio Railroad Company, his employer, in one of the courts of the State of Ohio, but the defendant, claiming citizenship in Maryland by reason of its incorporation in that State, obtained a removal of the cause to the Circuit Court of the United States for the southern district of Maryland. That court, following the decisions of the Ohio courts, gave Baugh a judgment for \$6,750, but the railroad company appealed the case to the Supreme Court of the United States, where the judgment of the lower court was reversed on the ground that, because of its interstate character, the liability of the railroad company must be determined by the general law and not by the decisions of the supreme court of the State of Ohio. Under the general law, Baugh could obtain nothing, although under the law as interpreted by the Supreme Court of the State of Ohio he had been awarded a verdict to the amount of nearly \$7,000. We may thus observe the paradoxical condition that an interstate railroad in the State of Ohio may incur no liabil-

ity for the death or injury of an employee, while an employee of a parallel intrastate road who might be killed or injured under precisely similar conditions would be awarded damages. The existence of such conditions as this early attracted the attention of Mr. Roosevelt, and in his first message to Congress, Dec. 2, 1902, he recommended the enactment of an employers' liability law. This recommendation was repeated in subsequent messages, and finally resulted in the passage of the Act of June 11, 1906, which came before the Supreme Court of the United States, to determine its constitutionality, the right of Congress to pass such a law having been contested by the railroads.

FINANCIAL BURDEN TO EMPLOYEES

Let us briefly consider the financial burden imposed upon railroad employees by the casualties which are an incident of their calling. It is well known that employees in railroad train service are unable to procure insurance in any of the old-line companies, except at rates that are practically prohibitive, while most of the companies absolutely refuse to accept such risks under any consideration. Certain of the companies will write five, ten, and fifteen year endowment policies for switchmen at premiums based upon a twenty-year advance in age; thus, for instance, a switchman, aged twenty-five years, may obtain such a policy by paying the forty-five-year premium rate. Inasmuch as insurance premium rates are based upon broad observation and are always the result of careful and accurate consideration, this fact is vastly significant. It means that the man who embraces the occupation of railroad switchman thereby at once cuts twenty years off his reasonable expectancy of life. If there is any compensating advantage in this occupation to offset the horror of this grim fact, the writer has failed to discover it in more than twenty years' close observation of the conditions of railway labor.

Being denied the benefits of ordinary insurance, railroad employees have been compelled to establish and maintain insurance societies of their own. These societies are never called upon to pay death claims as a result of old age. Their payments, however, on account of railroad accidents, are surprisingly large, and in most of the organizations represent a major portion of the total claims paid. In the year 1906 the Brotherhood of Railroad Trainmen, with a membership of 82,937, composed of conductors, brakemen, switchmen, and baggagemen, paid 1,350 claims, amounting to a total of \$1,671,548.96. More than two thirds of these claims, or 927 of the whole number, representing a cash total of considerably more than a million dollars, were paid as a result of deaths and disabilities caused by railroad accidents. During the year ending June 30, 1907, the Brotherhood of Locomotive Firemen and Enginemen, with a membership of about 63,000 engineers and firemen, paid 663 death and disability claims, amounting to \$947,100. More than 51 per cent of these claims, or 340 of the whole number, representing a cash payment of \$489,500, were paid on account of deaths and disabilities caused by railroad accidents. The Switchmen's Union of North America is a comparatively small organization, with membership confined to switchmen employed in railroad yard service. Last year this organization paid 179 death and disability claims. Three fourths of these claims, or 128 of the whole number, were paid for deaths or disabilities incurred by members in the ordinary discharge of their vocation ! Why should this enormous toll of life and treasure be exacted from railroad employees ? Does the efficient operation of the Nation's splendid transportation system require that this great burden remain where it has been ? Suppose we admit that the terrible sacrifice of lives and limbs is a necessary concomitant of railroad operation. Suppose we resign ourselves with oriental fatalism to the belief that our transportation Juggernaut must continue to crush out the lives of its operatives without abate-

ment. Even then, can we excuse ourselves for saddling upon those operatives the financial burden of providing for the needs of their widows and orphans, made such by the very exigencies of the industry itself? Is it not more to the point and more akin to justice, that this burden should be assumed by the transportation industry and, through it, by society as a whole?

SENTIENT AND INSENTIENT

The necessary factors of railroad operation are sentient and insentient; human beings and their tools and materials with which they work. Both are subjected to wear and tear; both are wasted in the performance of their functions. The railroads bear the expense of repairing the waste of their insentient instruments of operation, the wear and tear of roadbed and track, bridges and buildings, locomotives and cars; but for their sentient instruments of operation, they have no concern. The waste of human life and limb, the wear and tear of that active, intelligent army of human beings whose labor alone makes their operation possible, is not a necessary item in the expense account of railroads. They maintain a fund for the replacement of all the insentient factors of operation that are worn out or wrecked and have to be consigned to the scrap heap, but the human being that is wrecked as a consequence of his professional risk so as to make him unfit for further service is cast aside, and the carrier would assume no responsibility whatever for his condition. He must assume his own risk, must bear his own damage as though it had occurred by reason of his fault or his negligence, when, as a matter of fact, his damage is as much a result of the operation of the property as is the damage to locomotives and cars, bridges and buildings, railway and track, for all of which the carrier provides without question. As was said by Professor Bushnell in a thought-provoking article calling attention to the alarming increase in the number of abnormal dependents in the United States: "Soldiers suffer

because they are professional destroyers, but members of this great industrial army are struck down every year in this country because they are producers. This is the price they have to pay for the privilege of earning their bread in serving civilization."

It is to the everlasting credit of President Roosevelt that he has perceived the essential injustice of this situation and has earnestly endeavored to correct it, not alone by advocating the passage of the employers' liability and workmen's compensation acts, but by insisting upon a rigid enforcement of Federal statutes calculated to reduce the number of accidents as well as pointing out the need of strengthening or supplementing such legislation in the interest of greater safety. The Safety-Appliance Act of 1893, for the better protection of railroad employees in coupling and uncoupling cars, has been vigorously enforced by the administration under the direction of Mr. Roosevelt; indeed, had it not been for the work of Senator Knox, then Attorney-General, in securing action by the Supreme Court of the United States in the Johnson case, the humane purpose of this benefit law would have been largely defeated. This was the first instance wherein the Federal Government intervened in a private suit for the purpose of preserving the integrity of an Act of Congress, and to both the President and Senator Knox a debt of gratitude is due for inaugurating the proceedings in this case and pushing them to a successful conclusion. There can be no doubt that many lives have been thus saved to the nation that would have otherwise been wasted. Regulation of the hours of labor of railway employees in train service is another matter that has been urged upon Congress by the President, for the purpose of reducing the number of lives lost in railroad accidents. After vigorous opposition by the railroads through two sessions of Congress a law limiting the hours of labor of employees in train service was placed on the statute books. This law became effective on the 4th of March, 1908.

BLOCK SIGNALS

A law requiring the use of block signals on railroads engaged in interstate commerce is another measure that has been firmly advocated by the Administration. As a measure for the prevention of collisions, the enforcement of the space interval between trains, which will be brought about by the enforcement of a proper block signal system, is a matter of paramount importance. The railroads have opposed the enactment of such legislation on the score of expense, but when its vast possibilities in the way of saving human life are taken into consideration, it would seem that arguments of this character should have little weight. Again, the matter of expense has been greatly overestimated by the railroads, as the bill for the regulation of this matter, which has the support of the Administration, is so formulated as to provide that the item of expense shall not be unduly burdensome upon any particular carrier. In order that Congress may have full information on this subject so as to enable it to legislate intelligently, a joint resolution was passed directing the Interstate Commerce Commission to investigate and report on the use of and necessity for block signal systems and appliances for the automatic control of railway trains, and an appropriation of \$50,000 was granted the Commission to enable it to make experimental tests of such block signal systems and appliances. Under the authority of this resolution the Commission appointed a board of experts to make a thorough investigation of the whole subject.

ONE MILLION WORKERS ANNUALLY KILLED

All these matters are steps in the direction of lessening the number of industrial accidents, and so of greater economy in the expenditure of human life. In the article previously referred to, Professor Bushnell states that "at a conservative figure, 1,000,000 workers in the United States every year are killed or injured in industry by accidents, of which three quarters

are proven by European experience to be wholly unnecessary." I do not know whence Professor Bushnell derives his authority for the statement that 75 per cent of our industrial accidents are wholly unnecessary, and I am inclined to believe his estimate excessive; but it is, nevertheless, a fact that cannot be questioned that in all industrial occupations in the United States there is a reckless and wholly unnecessary waste of human life. This shameful condition will continue until effective measures are taken to increase the financial responsibility of employers for the death or injury of employees; in other words, industrial slaughter will go on as long as it remains cheaper to maim and kill men than to provide effective measures of safety for them. Whether we like to recognize it or not, the fact remains that the whole matter is one of dollars and cents, and we as a nation are greatly to blame that our statutes and our courts have held human life too cheap. We have held safety appliances more expensive than human beings. We must reverse this policy by the enactment of effective liability and compensation acts in all of our States and by vigorous enforcement of such laws of that character as are now on our statute books.

Federal legislation is not able to deal with this question in all of its aspects, as the power of Congress to deal with the conditions of labor is necessarily limited to labor engaged in interstate commerce or upon the waters of the United States. The Federal power has a fertile field of operation, however, in connection with railroads engaged in interstate commerce, and it is encouraging to note that Congress has apparently embarked upon a program of remedial legislation which promises vastly to increase our regard for the value of human life and reduce the number of accidents upon interstate railroads to the limits of the unavoidable.

FEDERAL SUPREMACY

A STUDY OF THE POWER OF THE CONGRESS OVER RAILROADS,
BY EDWARD A. MOSELEY

(Published in pamphlet form, March 23, 1907.)

Can Congress, in the exercise of its power of control over interstate commerce, either through the commerce clause of the Constitution or through the power to establish post-roads and to raise and support armies, establish regulations, and fix the rates to be charged for the transportation of passengers and property over interstate roads, even to the extent of regulating the rates to be charged from one point to another within the boundaries of a State without regard to the regulating power of the States?

Previous to the act to facilitate commercial, postal, and military communication among the several States, passed by Congress June 15, 1866 (14 Stat., 66), the National Government had never assumed the right to grant charters for the construction of railroads in any of the States without their consent, and the very extended debates which preceded the enactment of this measure turned mainly upon the right of Congress to charter such roads. The act in question was introduced originally by Senator Sumner for the purpose of correcting an interference with interstate commerce which had arisen through the action of the State of New Jersey in granting a monopoly for the transportation of passengers and property between the cities of New York and Philadelphia to the Camden & Amboy Railroad Company.

One of the terms of the charter under which this road operated was that, in lieu of all other taxation, the road should pay to the State of New Jersey a tax of ten cents for every passenger carried over its line between the cities of New York and Philadelphia, and all other railroads were forbidden to enter into competition with the Camden & Amboy Railroad for the trans-

portation of passengers and property across the State of New Jersey between the cities of New York and Philadelphia. During the war the National Government, in the transportation of troops and supplies for the maintenance of its armies, was unable to secure adequate transportation facilities from the Camden & Amboy Railroad, and in this emergency pressed the Raritan & Delaware Bay Railroad into its service for the transportation of a number of troops and a quantity of quartermaster's stores from New York to Philadelphia.

Under the terms of its charter the Camden & Amboy Railroad filed a bill in equity praying that the Raritan & Delaware Bay Railroad be compelled to desist and refrain from such transportation, and that an account be taken to ascertain the amount of damages. The New Jersey Courts upheld the claims of the Camden & Amboy Railroad, and compelled the Raritan & Delaware Bay Railroad to pay over the amount which it had received from the General Government for said service. It was to correct conditions of this kind that the act above mentioned was introduced, and its passage was vigorously contested on constitutional grounds in three sessions of Congress previous to its passage. Senator Sumner, who introduced the bill, contended for the right of the National Government to establish roads within the States on three separate grounds:—

First, under the power to regulate commerce among the several States;

Second, under the power to establish post-roads; and,

Third, under the power to raise and support armies.

With regard to the post-roads clause and the power to raise and support armies, Senator Sumner spoke as follows:—

“There is also the power ‘to establish post-roads,’ which is equally explicit. Here, too, the words are plain, and they have received an authoritative exposition. It is with reference to these words that Mr. Justice Story remarks that ‘constitutions of Government do not turn upon ingenious subtleties, but are adapted to the business and exigencies of human society; and

the powers given are understood, in a large sense, in order to secure the public interests. Common sense becomes the guide and prevents men from dealing with mere logical abstractions.' (Story, Commentaries on the Constitution, Vol. 2, Sec. 1144.) The same learned authority, in considering these words of the Constitution, seems to have anticipated the very question now under consideration. Here is a passage which may fitly close the argument on this head: —

“Let a case be taken *when State policy*’ —

“As, for instance, in New Jersey at this time — ‘or State hostility shall lead the Legislature to close up or discontinue a road, the nearest and the best between two great States, rivals, perhaps, for the trade and intercourse of a third State; shall it be said that Congress has no right to make or repair a road for keeping open for the mail the best means of communication between those States? May the National Government be compelled to take the most inconvenient and indirect route for the mail? In other words, have the States the power to say how, and upon what roads, the mails shall and shall not travel? If so, then, in relation to post-roads, the States, and not the Union, are supreme.’ (Story, Commentaries on the Constitution, Vol. 2, Sec. 1144.)

“Then comes the power ‘to raise and support armies’; an unquestionable power lodged in Congress. But this grant carries with it, of course, all incidental powers necessary to the execution of the principal power. It would be absurd to suppose that Congress could raise an army, but could not authorize the agencies required for its transportation from place to place. Congress has not been guilty of any such absurdity. Already it has by formal act proceeded ‘to authorize the President of the United States in certain cases to take possession of railroads and telegraphs, and for other purposes.’ (12 Statutes at Large, p. 334.) By this Act the President is empowered ‘to take possession of any or all the railroad lines in the United States, their rolling stock, their offices, shops, buildings, and all their appendages and appurtenances,’ and it is declared that any such railroads ‘shall be considered as a post-road and a part of the military establishment of the United States.’ Here is the exercise of a broader power than any which is now proposed. The less must be contained in the greater.”

On the final passage of this bill Senator Clarke, of New Hampshire, succeeded in having incorporated as an amendment to the first section of the bill the following words: —

"Nor shall it be construed to authorize any railroad company to build any new road or connection with any other road without authority from the State in which railroad or connection may be proposed."

This amendment was accepted by the supporters of the bill in order to remove opposition and insure its passage, but it was insisted by Senator Sumner and other supporters that the amendment was not at all necessary to make the statute conform to the Constitution, but was adopted merely to allay the feeling of opposition on the part of the States.

The debates on this bill were exhaustive as to the right of Congress to charter and construct roads within the States without their consent, and Senator Morrill, of Maine, who was a vigorous opponent of the measure, had this to say as to its effect:—

"It proposes, sir, in a word, to take by the power of the General Government the direction of the internal railway systems of the United States. This is the proposition: I know it may be said that it only proposes to regulate it. To regulate is to control; to control is to direct; and under whatever branch you seek to exercise this authority, whether by the commercial power or by the power to regulate the postal service, or by that to raise and support armies and navies, it is the same thing; it is substantially to assert the power by the General Government to reach out its hand and lay its strong arm on the great American railway system. If you have a right to say that roads may connect and shall connect; if you have a right to say that a railroad company in the interior of New Jersey—and that is precisely this case—may extend its road across the State and then across the Delaware River and connect with other roads, and that all roads, whether the States authorizing them will or not, shall have the right to connect one road with another, you have thereby asserted a principle which will justify the Government in establishing rules and regulations in regard to the commerce over these internal railways precisely as upon the navigable waters of the United States."

Senator Johnson, of Pennsylvania, who was also an opponent of the bill, characterized it as follows:—

"Now what does this bill say? That a road constructed for the local trade of a State, for the purpose of benefiting a commerce entirely internal as within a State, shall not be subject to any limitations contained in its own charter, provided it has on board its cars a passenger or a box of freight designed to go beyond the limits of which the road is authorized to carry it by its own charter. Once find the possession of one of these companies whose rights are limited, granted for the purpose of carrying on domestic trade as contradistinguished from commerce between the States — once put on board a road of that description a particle of freight or a single passenger, and it has a right to disregard its own charter, and the State has no authority to refuse that permission. It has no authority, therefore, to repeal the charter."

Senator Howard, of Michigan, one of the supporters of the measure, expressed his view as to the power of Congress in the following language:—

"Now, I insist, sir, that a State charter cannot impose conditions upon a company that shall prevent, burden, or obstruct commerce, because the power to regulate commerce is granted exclusively to Congress, and therefore such a condition is void. I will not undertake to deny that Congress might, in an exigency, regulate the price of freight and passage money upon the ocean. The time may come when the exercise of such a power will become necessary. We have never, thus far, exercised it, to be sure; we have not seen the necessity of exercising it. And for the same reason I shall not deny that Congress has the power to regulate even tolls in the matter of trade among the States, though we have never exercised it, nor assumed to exercise it, thus far. I am not, however, by such objections to be frightened out of my position, that the power of Congress is just as exclusive over the one kind of commerce as the other."

And Senator Howe, of Wisconsin, expressed his opinion of the power of Congress over such matters as follows:—

"But I said I denied that the power to build railways or authorize the construction of railways is exclusively in the several States. I have no manner of doubt, if it were adjudged by Congress necessary and expedient to promote the commercial interests of the United States, to advance the interests of commerce moving between State and State, to build a railway, that

we might authorize the construction of a railway or build it ourselves. It is an instrument of commerce, and if we judge it expedient to build one, who shall control the exercise of our discretion?"

The right of Congress to charter roads within the boundaries of a State without the State's consent is no longer open to question. That matter was definitely settled by the decision of the Supreme Court of the United States in *California v. Pacific Railroad Company* (127 U. S. 1). It necessarily follows that, in the exercise of its power to grant franchises for the construction of railroads, Congress may establish such regulations as it sees fit for the transportation of passengers and property over such roads, and it is undoubted that such agencies of transportation are free from any measure of State control. In delivering the opinion of the court in *California v. Pacific Railroad Company*, Mr. Justice Bradley said:—

"The power to construct or to authorize individuals or corporations to construct National highways and bridges from State to State is essential to the complete control and regulation of interstate commerce. Without authority in Congress to establish and maintain such highways and bridges, it would be without authority to regulate one of the most important adjuncts of commerce. This power in former times was exerted to a very limited extent, the Cumberland or National Road being the most notable instance. Its exertion was but little called for, as commerce was then mostly conducted by water, and many of our statesmen entertained doubts as to the existence of power to establish ways of communication by land. But since, in consequence of the expansion of the country, the multiplication of its products, the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject."

If Congress has plenary power over the whole subject, then the control of all rates on interstate roads, operating under a National franchise, whether for the transportation of passengers and property from a point in one State to a point in another

State, or for the same service between two points lying within the boundaries of a State, is wholly within its discretion.

In the exercise of this power, the National Government can fix the charges to be made for transportation over an interstate road from one point to another within the boundaries of a State to the same extent as it may from a point in one State to a point in another State. In *Stockton v. Baltimore & New York Railroad Company*, decided by Justice Bradley of the Supreme Court of the United States, sitting as Circuit Judge in the United States Circuit Court for the District of New Jersey, August 1, 1887 (32 Fed. Rep. 9), it was held that, in carrying on foreign and interstate commerce, corporations, equally with individuals, are within the protection of the commercial power of Congress and cannot be molested in another State by State burdens or impediments; also, that Congress can confer upon a State Corporation powers not contained in its original charter, and that the power of Congress is supreme over the whole subject of interstate commerce, unimpeded and unembarrassed by State lines or State laws.

In the course of the opinion (bottom of page 16) Justice Bradley said: —

“Still it is contended that, although Congress may have power to construct roads and other means of communication between the States, yet this can only be done with the concurrence and consent of the States in which the structures are made. If this is so, then the power of regulation in Congress is not supreme; it depends on the will of the States. We do not concur in this view. We think that the power of Congress is supreme over the whole subject, unimpeded and unembarrassed by State lines or State laws; that, in this matter, the country is one, and the work to be accomplished is national; and that State interests, State jealousies, and State prejudices do not require to be consulted. In matters of foreign and interstate commerce there are no States.”

The principles here laid down are now adjudged law in the courts of the United States, and there would seem to be no ques-

tion concerning the right of Congress to make all regulations necessary to the control and operation of interstate railroads.

The question of the power of a State to make regulations affecting the rates to be charged for the transportation of interstate commerce seems to be settled by the decision of the Supreme Court of the United States in the case of the *Wabash, St. Louis & Pacific Railway Company v. Illinois* (118 U. S. 557), which was decided October 25, 1886, Mr. Justice Miller delivering the opinion of the Court.

That case concerned the validity of a statute of the State of Illinois enacted to prevent unjust discrimination and extortion in the rates to be charged by railroads in the State of Illinois for the transportation of freight on said roads. The Court held that in so far as the statute in question affected interstate commerce, it was not a valid law, saying :—

“We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a State which attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the States, is a valid law.”

And again :—

“When it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely remitted to local rules and local regulations, we think is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois court conceives it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles, which demand that it shall be done by the Congress of the United States under the commerce clause of the Constitution.”

So, with respect to the regulation of interstate commerce, it no longer can be doubted that the National Government has exclusive power, and that no State can make a valid regulation affecting the interstate transportation of passengers and property.

The freedom of interstate commerce from State control was definitely settled as to the taxing power of the State in the case of the State Freight Tax in 1873 (15 Wall. 232), and later in 1887 in the case of *Robbins v. Shelby County Taxing District* (120 U. S. 489). The freedom of interstate commerce with respect to the police power of the State was also declared in the cases relating to the liquor traffic. *Mugler v. Kansas* (123 U. S. 623). In 1894 this principle was extended to an interstate bridge, and it was held that the bridge was an instrument of interstate commerce whereon Congress alone possessed the power to enact a uniform schedule of charges. *Covington, etc., Bridge Co. v. Kentucky* (154 U. S. 204). The same principle was later applied in holding invalid the dispensary laws of South Carolina regulating the sale of intoxicating liquors and prohibiting their importation. *Scott v. McDonald* (165 U. S. 58); *Vance v. Vandercook* (170 U. S. 438).

The conclusion that flows from these decisions is that the right to carry on commerce among the States is subject to the control of Congress only; it is not the exercise of this power, but its existence in Congress, which excludes all State control and interference.

The existence of the power to control absolutely and exclusively both the subjects and instrumentalities of interstate commerce is undisputed and undoubted, and any attempt by a State to control interstate carriers by fixing the rates they shall charge for shipments from one point to any other point on their lines involves a conflict of power.

Justice Bradley, in *Robbins v. Shelby Taxing District* (120 U. S. 489, 494), said:—

"In a word it may be said, that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulation, and not to a multitude of systems."

And again, speaking of certain well-settled principles, and citing numerous decisions of the Supreme Court, he said, p. 492:—

"The Constitution of the United States having given to Congress the power to regulate commerce, not only with foreign nations, but among the several States, that power is necessarily exclusive whenever the subjects of it are national in their character, or admit only of one uniform system or plan of regulation."

The laws of a State have no extra-territorial force. They can operate only within its limits, and the Legislatures of States through which an interstate road may run, moved by local prejudice and whim, each, in time, passing laws regulating rates to be charged by that road, presents a total lack of uniformity. The power in the Federal Government being unquestioned, the control by it of the interstate carrier follows, even to the extent of controlling rates charged for transportation anywhere on its line. This power arises not alone from the commerce clause of the Constitution, but from various clauses therein; it is the aggregate of powers, both enumerated and implied, which constitutes the Federal sovereignty; and it is the exercise of those powers which insures to the greatest number of the people the greatest good.

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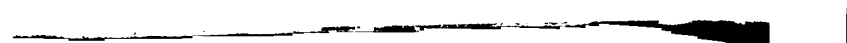
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